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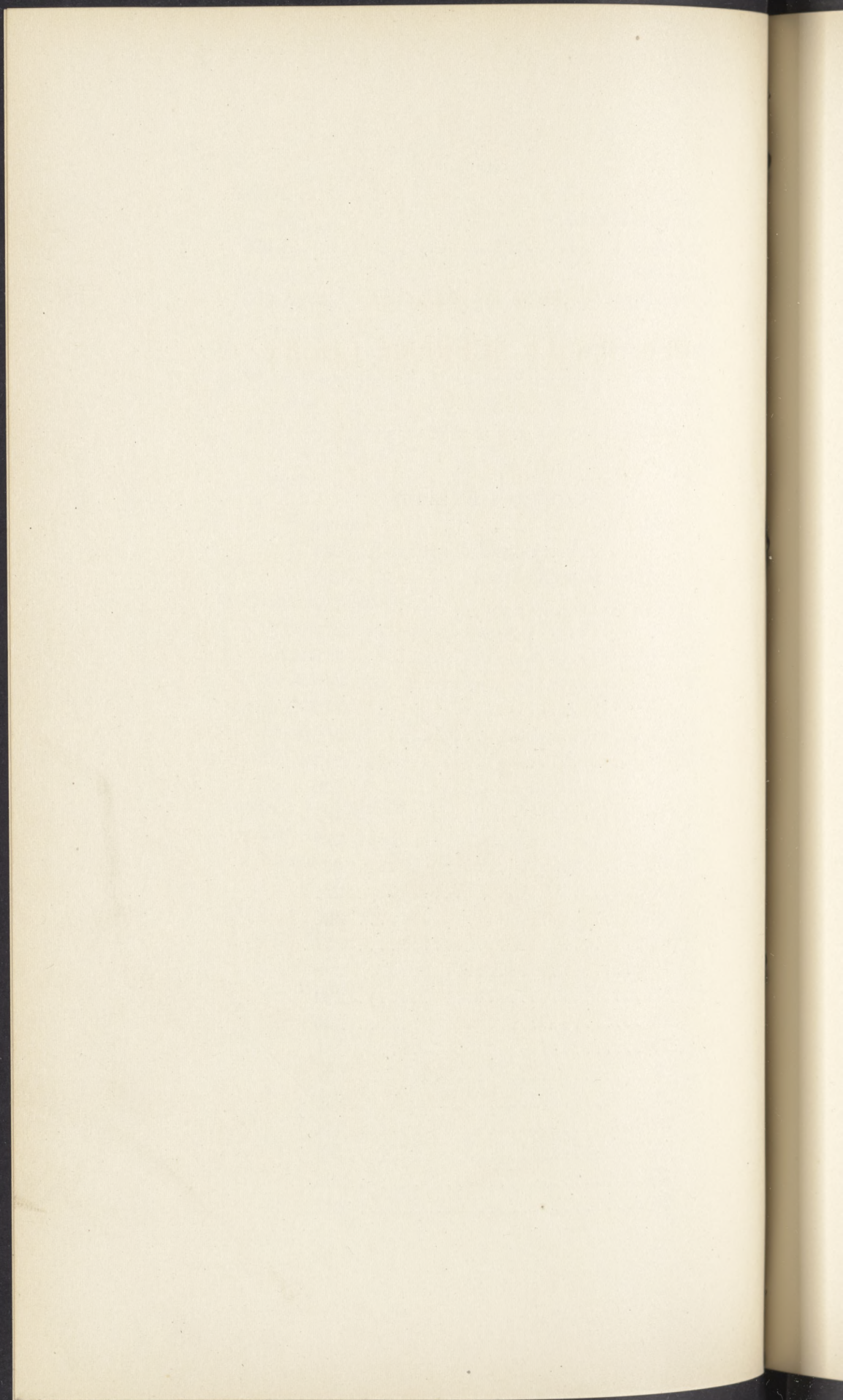
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**Notice of Appeal.**

**NEW JERSEY SUPREME COURT**

HUDSON COUNTY.

10

LILLIAN HUNKE,  
Plaintiff,

vs.

EDWARD HUNKE and  
CATHERINE HUNKE,  
Defendants.

Action at Law.

20

To JOHN J. FALLON, Esq.,  
Attorney for the Plaintiff in  
the above entitled cause.

Dear Sir:

PLEASE TAKE NOTICE, that the defendants, Edward Hunke and Catherine Hunke, appeal to the Court of Errors and Appeals in the last resort in all cases in New Jersey, from the whole of the Judgment entered in this Court:

30

Dated: December 18, 1926.

WM. F. BURKE,  
Attorney for Defendants.

40

**Grounds of Appeal.**

NEW JERSEY SUPREME COURT,

10	<p style="text-align: center;">LILLIAN HUNKE, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">CATHERINE HUNKE, and EDWARD HUNKE, Defendants.</p>	}	On Appeal
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To: Fallon & Fallon, Attorneys for the Plaintiff.

20 TAKE NOTICE, that the defendants write out the following reasons and grounds of appeals, why the verdict for the plaintiff against these defendants in the above entitled matter should be set aside, and a new trial granted.

30 1. Because the Court erred in not ordering a mistrial, when the counsel for the plaintiff in his opening, made remarks directed to the defendant, Edward Hunke, which remarks were derogatory of him, and uttered in the presence of the jury; said remarks not being a part of the questions at issue, and prejudicial to the defendants or either of them.

40 2. Because the Court erred in not taking some step to mitigate the prejudice against the defendant, Edward Hunke, credited by the derogatory remarks of the plaintiff's counsel in his opening of the case to the jury; said remarks being immaterial and non-pertinent to the matter in issue.

*Grounds of Appeal.*

3. Because the Court erred in receiving in evidence, Plaintiff's Exhibit No. 12 of the date of November 16, 1926, over the objection of the defendants' counsel.

4. Because the verdict of the Jury was contrary to the weight of evidence. 10

5. Because there was no evidence to support the verdict of the Jury.

6. Because the damages awarded by the verdict of the Jury were excessive.

7. Because the Court erred in denying the motion of the defendants for a judgment of a non-suit at the close of the plaintiff's case, whereas such a motion should have been granted. 20

8. Because the Court erred in denying the motion of the defendants, at the close of the case for a direction of a verdict in favor of the defendants, whereas such a motion should have been granted.

9. Because the Court erred in denying the motion at the close of the plaintiff's case for a judgment of non-suit as against the defendant, Edward Hunke, whereas such a motion should have been granted, as to him. 30

10. Because the Court erred in denying the defendants' motion for a direction of a verdict in favor of the defendant, Edward Hunke, at the close of the case, whereas such a motion should have been granted to him. 40

*Grounds of Appeal.*

11. Because the verdict of the jury against the defendant, Edward Hunke was contrary to the weight of evidence.

10 12. Because there was no evidence to support the verdict of the Jury as against the defendant, Edward Hunke.

13. Because the damages awarded by the verdict of the Jury against the defendant, Edward Hunke, were excessive.

Yours respectfully,

20

WM. F. BURKE,  
Attorney for Defendants-Appellants.

30

40

**Summons.**

## THE STATE OF NEW JERSEY

To: EDWARD HUNKE and CATHERINE HUNKE,

You are summoned to answer the annexed complaint of Lillian Hunke, in an action at law, in the Supreme Court. And take notice that unless you file your answer with the Clerk of the Supreme Court at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you. 10

WITNESS, WILLIAM S. GUMMERE, Esquire, Chief Justice of the Supreme Court, at Trenton, this 28th day of May, 1924. 20

EDWARD J. KELLEHER,  
Clerk.

FALLON & FALLON,  
Attorneys.

Served June 2, 1924. 30

**Amended Complaint.**

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

10

LILLIAN HUNKE,  
Plaintiff,

vs.

EDWARD HUNKE, and  
CATHERINE HUNKE,  
Defendants.

Action at Law.

20

Plaintiff, Lillian Hunke, residing in the Township of Weehawken, in the County of Hudson and State of New Jersey, says that:

## FIRST COUNT.

1. Plaintiff was at the time hereinafter mentioned and now is the wife of Harry G. Hunke, a son of the above-named defendants.

30

2. Plaintiff and said Harry G. Hunke, were married on the sixth day of August, 1919, by Rev. Arthur Schmoyer, a Minister of the Gospel, at the Township of Weehawken, Hudson County, New Jersey.

3. One child was born as the fruit of the aforesaid marriage, to wit: Warren Hunke, who is now of the age of three years and eight months.

40

*Amended Complaint.*

4. Plaintiff and her aforesaid husband lived happily together as husband and wife until about the month of June, 1922, when at the special instance of plaintiff's said husband they removed to Woodcliff, in the Township of North Bergen, New Jersey. Prior to such removal plaintiff's said husband was accustomed to remain at home with her after his return from work, but after such removal, plaintiff's husband became accustomed to visit his parents' home in Woodcliff, aforesaid, after his return from his work. 10

5. From the time when plaintiff's said husband began to visit his parents' home, after the removal of plaintiff and her said husband to Woodcliff, aforesaid, her said husband manifested that he no longer had any affection for her. 20

6. During the times when plaintiff and her said husband were living together, the defendants contriving and wrongfully intending to injure the plaintiff and to deprive her of the comfort, society and aid of her said husband, Harry G. Hunke, alienated and destroyed his affection for the plaintiff, and thereby the affections of the said Harry G. Hunke were lost to the plaintiff. 30

7. As a result of the actions of said defendants, and by and through the influence and persuasion of said defendants, plaintiff's said husband neglected and ill-treated plaintiff and refused cohabitation with plaintiff.

8. As a result of the alienation by defendants of the affection of their son, plaintiff's husband, 40

*Amended Complaint.*

from plaintiff, her said husband Harry G. Hunke, on October 21, 1922, deserted the plaintiff and has ever since deserted and remained away from her.

- 10     9. Plaintiff, as a result of her husband's deser-  
tion of her as aforesaid, filed a complaint against  
him with the Recorder of the Township of North  
Bergen, Hudson County, New Jersey, and as a  
result of which her said husband contributed,  
though inadequately, to the support of plaintiff  
and their said child, until November 11, 1922,  
when he ceased entirely to contribute to the sup-  
port of plaintiff and their said child, and has  
20 ever since neglected and refused to contribute  
thereto.

## SECOND COUNT.

1. Plaintiff repeats all of the allegations of  
the first count.

- 30     2. The defendants contriving and wickedly  
and unjustly intending to injure plaintiff and to  
deprive her of the comfort, fellowship, society and  
aid of her husband, Harry G. Hunke, and to  
alienate and destroy his affections for the plain-  
tiff, heretofore, to wit: in the month of October,  
1922, maliciously enticed away the plaintiff's said  
husband from the said plaintiff, and her then  
residence in Woodcliff, North Bergen, Hudson  
County, New Jersey, and harbored plaintiff's said  
husband in their own home, in Woodcliff afore-  
40 said, and influenced him to remain away from  
plaintiff against the consent of the plaintiff, until

*Amended Complaint.*

on or about the first day of February, 1923, when through the connivance of the defendants, plaintiff's said husband absconded from the State of New Jersey, and has ever since deserted plaintiff and their aforesaid child and has neglected and refused to support and maintain plaintiff and their said child. 10

## THIRD COUNT.

1. Plaintiff repeats all of the allegations of paragraphs 1, 2, 3, 4, 5 and 9 of the first count.

2. During the times when plaintiff and her said husband were living together the defendant, Edward Hunke, contriving and wickedly and unjustly intending to injure the plaintiff, and to deprive her of the comfort, fellowship, society and aid to her said husband Harry G. Hunke, alienated and destroyed his affection for the plaintiff, and thereby the affections of the said Harry G. Hunke was lost to the plaintiff. 20

3. As a result of the actions of said defendant, Edward Hunke, and by and through the influence and persuasion of said defendant, plaintiff's said husband neglected and ill-treated plaintiff and refused cohabitation with her. 30

4. As a result of the alienation by the defendant Edward Hunke of the affection of his son, plaintiff's husband, from plaintiff, her said husband Harry G. Hunke on October 21, 1922, deserted the plaintiff and has ever since deserted and remained away from her. 40

*Amended Complaint.*

## FOURTH COUNT.

1. Plaintiff repeats all of the allegations of paragraphs 1, 2, 3, 4, 5 and 9 of the first count.

10 2. The defendant, Edward Hunke, contriving and wickedly and unjustly intending to injure plaintiff and to deprive her of the comfort, fellowship, society and aid of her said husband Harry G. Hunke, and to alienate and destroy his affection for the plaintiff, heretofore, to wit, in the month of October, 1922, maliciously enticed away the plaintiff's said husband from the said plaintiff, and her then residence in Woodcliff, North Bergen, Hudson County, New Jersey, and  
20 harbored plaintiff's said husband in his own home in Woodcliff aforesaid, and influenced him to remain away from plaintiff, against the consent of the plaintiff, until on or about the first day of February, 1923, when through the connivance of said defendant Edward Hunke plaintiff's said husband absconded from the State of New Jersey, and has ever since deserted plaintiff and their aforesaid child and has neglected and refused to  
30 support and maintain plaintiff and their said child.

## FIFTH COUNT.

1. Plaintiff repeats all of the allegations of paragraphs 1, 2, 3, 4, 5 and 9 of the first count.

40 2. During the times when plaintiff and her said husband were living together the defendant, Catherine Hunke, contriving and wickedly and

*Amended Complaint.*

unjustly intending to injure the plaintiff, and to deprive her of the comfort, fellowship, society and aid of her said husband Harry G. Hunke, alienated and destroyed his affection for the plaintiff, and thereby the affections of the said Harry G. Hunke was lost to the plaintiff. 10

3. As a result of the actions of said defendant, Catherine Hunke, and by and through the influence and persuasion of said defendant, plaintiff's said husband neglected and ill-treated plaintiff and refused cohabitation with her.

4. As a result of the alienation by the defendant Catherine Hunke of the affection of her son, plaintiff's husband, from plaintiff, her said husband Harry G. Hunke on October 21, 1922, deserted the plaintiff and has ever since deserted and remained away from her. 20

## SIXTH COUNT.

1. Plaintiff repeats all of the allegations of paragraphs 1, 2, 3, 4, 5 and 9 of the first count. 30

2. The defendant, Catherine Hunke contriving and wickedly and unjustly intending to injure plaintiff and to deprive her of the comfort fellowship, society and aid of her said husband Harry G. Hunke, and to alienate and destroy his affection for the plaintiff, heretofore, to wit, in the month of October, 1922, maliciously enticed away the plaintiff's said husband from the said plaintiff and her then residence in Woodcliff, North 40

*Amended Complaint.*

10 Bergen, Hudson County, New Jersey, and harbored plaintiff's said husband in her own home in Woodcliff aforesaid, and influenced him to remain away from plaintiff, against the consent of the plaintiff, until on or about the first day of February, 1923, when through the connivance of said defendant Catherine Hunke, plaintiff's said husband absconded from the State of New Jersey, and has ever since deserted plaintiff and their aforesaid child and has neglected and refused to support and maintain plaintiff and their said child.

20 Plaintiff demands as damages on the first count the sum of \$25,000.

Plaintiff demands as damages on the second count the sum of \$25,000.

Plaintiff demands as damages on the third count the sum of \$25,000.

Plaintiff demands as damages on the fourth count the sum of \$25,000.

Plaintiff demands as damages on the fifth count the sum of \$25,000.

30 Plaintiff demands as damages on the sixth count the sum of \$25,000.

FALLON & FALLON,  
Attorneys for Plaintiff.

**Answer.**

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

<p style="text-align: center;">LILLIAN HUNKE Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">EDWARD HUNKE and CATHERINE HUNKE, Defendants.</p>	}	<p>10</p> <p>Action at Law.</p>
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Defendants, answering, says: 20

## ANSWER TO FIRST COUNT.

1. Paragraph one is admitted.
2. Paragraph two is admitted.
3. Paragraph three is admitted.
4. Paragraph four is denied.
5. Paragraph five is denied.
6. Paragraph six is denied.
7. Paragraph seven is denied. 30
8. Paragraph eight is denied.
9. Paragraph nine is denied.

## ANSWER TO SECOND COUNT.

1. Defendants repeat the answers to all the allegations contained in First Count.
2. Paragraph two is denied. 40

*Answer.*

ANSWER TO THIRD COUNT.

1. Defendants repeat the answers to all the allegations contained in First Count.
2. Paragraph two is denied.
- 10 3. Paragraph three is denied.
4. Paragraph four is denied.

ANSWER TO FOURTH COUNT.

1. Defendants repeat the answers to all the allegations contained in the First Count.
2. The second paragraph is denied.

ANSWER TO FIFTH COUNT.

- 20 1. Defendants repeat the answers to all the allegations contained in the First Count.
2. Paragraph two is denied.
3. Paragraph three is denied.
4. Paragraph four is denied.

ANSWER TO SIXTH COUNT.

- 30 1. Defendants repeat the answers to all the allegations contained in the First Count.
2. Paragraph two is denied.

(WILLIAM F. BURKE),  
Attorney for Defendants.

**Case.**

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

LILLIAN HUNKE,

vs.

EDWARD HUNKE, *et al.*

10

Before: Hon. WILLIAM W. CUTLER, *J.* and a Jury.

Jersey City, N. Y., November 16, 1926.

20

## APPEARANCES:

FALLON & FALLON, Esqs. (By JOHN J. FALLON,  
Sr.), for the Plaintiff.

WILLIAM F. BURKE, Esq., for the Defendants.

Mr. Fallon: (While in his opening to the jury.)  
Your Honor, may I ask that you admonish Mr.  
Hunke not to be sneering at my remarks? I think  
he should be placed in the back of the court room,  
because I do not think it is proper that he should  
be constantly sneering at my remarks. This is a  
serious case—although he does not seem to take it  
so. Mr. Burke, will you direct Mr. Hunke to go to  
the back of the court room?

30

The Court: No, I don't think that is necessary.

Mr. Fallon: Then will your Honor admonish him  
not to sneer at my opening to the jury?

40

*Lillian Hunke, Plaintiff, Direct.*

Mr. Burke: Your Honor, I would like to enter an exception to this. May I have an exception to these remarks of Mr. Fallon?

The Court: Proceed.

10

---

LILLIAN HUNKE, plaintiff, sworn:

*Direct Examination by Mr. Fallon:*

Q. Mrs. Hunke, you are the plaintiff in this suit?

A. I am.

20 Q. You are the wife of Harry Hunke? A. Yes, sir.

Q. Edward Hunke and Catherine Hunke, the defendants in this suit, are the father and mother, respectively of Harry Hunke? A. They are.

Q. When were you married? A. August 6, 1919.

Q. Where were you living at the time of your marriage? A. I was living at 51 Second Street, Weehawken.

30 Q. How old were you at the time you were married? A. Nineteen.

Q. How old was your husband? A. Twenty-two.

Q. With whom do you live now? A. With my parents.

Q. What is your father's name? A. Charles Frazer.

Q. And your mother's? A. Mary Fraser.

Q. Where do they live? A. 51 Second Street, Weehawken.

40 Q. How long have you lived with them? A. Four years.

*Lillian Hunke, Plaintiff, Direct.*

Q. After your marriage where did you and your husband go to live? A. 416 West 215th Street, New York City.

Q. Who provided for the furnishing of your home? A. My husband and some earnings I had saved before my marriage. 10

Q. Did your mother contribute any money towards the furnishing of that home? A. Absolutely none.

Q. Where did you say you lived after your marriage? A. 416 West 215th Street, New York City.

Q. Up to what time did you live there? A. From August after I was married until June, 1922.

Q. Was there a child born to you and your husband? A. Yes, sir. 20

Q. The child is living? A. Yes, I have him right here with me.

Q. What is the child's name? A. Warren.

Q. How old is the child? A. Six.

Q. Where did your husband work in October, 1922? A. Jones and Baker, Stockbroker, 50 Broad Street.

Q. How much did he earn a week? A. Seventy dollars. 30

Q. In June, 1922, did you and your husband remove to New Jersey? A. Yes.

Q. Where? A. 100 West 31st Street, Woodcliff.

Q. While you and your husband lived in New York, had you and he quarrelled, or had any difficulty? How did you live? A. Lived very happy.

Q. Was your husband accustomed to being at home or away at nights? A. Always came home.

Q. After you removed to New Jersey, were there any changes in his habits in that respects? His 40

*Lillian Hunke, Plaintiff, Direct.*

being at home nights? A. After we lived there awhile he changed considerably. He was indifferent.

Q. Was there any reason for the change at that time? A. Not that I know of. No.

10 Q. Were there any quarrels between you and your husband about other women? A. No.

Q. Had you had any knowledge of your husband running around with women? A. No.

Q. Do you remember talking with Kennedy or Jones and Baker? A. Yes.

Q. Did you receive any word from Kennedy that your husband was running with a cashier or some such person? A. Knew of some woman—

20 Q. When did you go to see Mr. Kennedy? A. I believe it was in January, 1923.

Q. Were you and your husband living together then? A. No, sir.

Q. Then, what was said to you at that time by Mr. Kennedy, was that the first intimation you had of any suggestion by anyone that your husband had in any wise been friendly with any other women?

30 Mr. Burke: I object to that as leading.  
The Court: It is leading.

Q. Mrs. Hunke, about when was it after you removed to New Jersey that you first noticed any difference in your husband's attitude toward you? A. The early part of October.

Q. In what way did it manifest itself to you? A. He acted considerably different.

40 Q. In what respect? A. He didn't come home at night; would stay away. When I asked him

*Lillian Hunke, Plaintiff, Direct.*

where he was staying he would say he was at his parents' home.

Q. How far from where you were then living did your parents live? A. I lived on 31st Street and they lived on 34th Street.

Q. Do you recall October 12, 1922, when you and your husband was at your parents-in-laws' home? A. Yes, sir. 10

Q. Did you at that time hear your mother-in-law say anything to your husband about breaking home? A. I did.

Q. Please tell the court and jury what was said at that time. A. She said she thought it a very good idea if we would put our things in storage and both go back to work and in that way be able to save some money quickly and pay the debts which Harry told her he owed. 20

Q. Did Harry have any debts that you know of, connected with the home? A. Absolutely none.

Q. What did you say to her, if anything, when she made that remark? A. I felt terribly bad about it—I couldn't—

Q. What did you say? A. Break up our home—nothing like that—I couldn't understand why she suggested anything like that. 30

Q. Was there anything else said that you recall? A. She said, "Well, if you do that you will be able to save some money."

Q. Was there anything said as to why you should save this money? A. Nothing that I know of.

Q. On that night before that statement was made to you by your mother-in-law were you and your husband dancing in that house? A. Yes, we were. 40

*Lillian Hunke, Plaintiff, Direct.*

Q. Was there any reason that you know of that that statement should have been made by your mother-in-law before it was made? A. No, sir.

Q. Had there been any talk in the house in your presence between your husband and his mother that led to that statement? A. No, sir.

Q. What did you say to your husband about the statement made by the mother in that respect? A. When I got home that evening I said—

Mr. Burke: I object to that.

The Court: What was this whole transaction?

Mr. Fallon: I believe it is admissable although I am frank to acknowledge that I don't know as to the jurisdiction of the courts in New Jersey on that question.

The Court: I am not going to allow it.

Q. How much rent were you paying at that time Mrs. Hunke? A. Sixty dollars.

Q. A month? A. Yes.

Q. How much had you been paying in New York? A. Forty-five dollars.

Q. Where was this furniture bought that you bought for your home? A. The dining suite was purchased at Greene's; the bedroom suite Big Bee's in New York.

Q. You say they were purchased by you and your husband together with moneys that you had? A. Yes, sir.

Q. Do you recall right after October 12th, when your mother-in-law came to your home and said something to you about breaking up home? A. Why, yes. She said—

*Lillian Hunke, Plaintiff, Direct.*

Q. Please tell us what was said, about the month and year? A. It was in October.

Q. What year? A. 1922.

Q. Please tell the Court and Jury what she said at that time. A. She suggests the same as before.

Q. Tell us what was said? A. That she thought it would be a good idea to put our things in storage; that I could go home to my mother and that Harry could go home to his mother, and that we would save money—my mother could take care of my baby. I said, "Why should I break up my home. There is no reason for doing that. Harry is making a good salary; we are getting along nicely." I couldn't see why that should happen. I had a nice home and I didn't want to break it up.

Q. Was there anything said by you to Mrs. Hunke, senior, that called for that statement? A. No, sir.

Q. Did you make mention of that to your husband when he came home that night?

Mr. Burke: I object to that as leading.

The Court: I will let it stand. Answer yes or no.

The Witness: Yes.

Q. Can you tell us about what date in October that statement was made by Mrs. Hunke, senior, to you? A. It was around the 20th, I believe.

Q. On the 21st of October, 1922, was Mrs. Hunke, senior, in your home? A. Yes, sir.

Q. About what time did she come there? A. Afternoon.

Q. And, about how long did she remain with you? A. She only intended to stay—

*Lillian Hunke, Plaintiff, Direct.*

Q. I said how long did she remain? A. She remained until one o'clock the next morning.

Q. At that hour of the morning who else was in that home besides Mrs. Hunke, senior? A. Alice, the daughter, and my sister.

10 Q. When your husband came home, what if anything, did your mother-in-law say to him in your presence? A. Nothing in my presence. She took him in the dining room.

Mr. Burke: I object.

20 Q. She took him aside? A. Before she took him aside she said to me, "Don't come with us. Let me talk with him," and she took him into the dining room and spoke with him awhile, and before she left she said, "Harry, we want to take you up to Montclair with us." She looked at me and said, "I don't think you and the baby had better come. It is quite cold up there and we have no fire."

Q. Do you know what she meant by referring to Mt. Clair? A. That was their summer home.

30 Q. Did your husband return home to you at any time after the morning of October 21, 1922? A. He came in October 22, that was Saturday. He only stayed half an hour, and then went out, and I never heard from him after that.

Q. When he came home, what did he do, if anything? A. Well when he came home, when he left in the morning he said he would be—

Q. What did he do when he came into the home? A. He acted very restless.

40 Q. About what time of the day did he leave his home? A. About six o'clock.

*Lillian Hunke, Plaintiff, Direct.*

Q. Morning or night? A. Six o'clock at night.

Q. Did you see him at any time after that in the home? A. Not in the home, no.

Q. Did he come home that night? A. No, sir. That was—

Q. The following morning what did you do? A. 10  
The following morning between seven and seven thirty I went over to his parents' home with my sister.

Q. Which sister? A. Florence went up on the porch. My sister rang the bell and Mrs. Hunke, senior, came to the window, and wanted to know what we wanted. My sister said, "Harry didn't come home all night." I didn't say anything. I was crying. Mrs. Hunke said, "Oh, go home and go to bed." My sister called my attention to a top coat hanging over a chair in the living room. 20

Q. Did she say that audibly so that Mrs. Hunke could hear? A. The window was closed. I don't know if she heard.

Q. What other conversation was had between you? Was the window closed? A. Yes, but, she swung it open.

Q. And, then what was asked? A. She said, "Open and let us in." Mrs. Hunke said, "No, I am in my night dress." My sister said, "We are all women. That is all right. Let us in." Then she said, "Oh, go home," and pulled the shade down in our face. 30

Q. Did you, thereafter, receive money from your husband? A. Yes, I did, but irregularly.

Q. About how much did you receive at time? A. Right after that I received two weeks, and then it dropped off for two or three weeks. 40

*Lillian Hunke, Plaintiff, Direct.*

Q. How did you receive it? A. First I received a money order, I believe, and then I received two checks on the Guttenberg Trust Company.

10 Q. How much did he pay you as a rule? A. Fifteen or twenty dollars.

Q. You say he paid it irregularly? A. Yes, he did.

Q. As a result of his paying you irregularly did you go to his place of business? A. Yes.

Q. About how long after he had left you did you do that? A. That was around the first of November, I believe.

20 Q. Did you receive any money from him at that time? A. He owed me, I believe it was three weeks. He said to me, "I haven't any money; I know I owe you for three weeks, but I can't pay you now; I have to pay my father and I can't pay that."

Mr. Burke: I object to that.

The Court: Strike it out.

Mr. Fallon: May I object to his objection: the objection was not timely.

30

Q. How long did you remain living in the home which was occupied by you and your husband, up to the time of his desertion, about October, 1922? A. Until the first part of December, 1922.

Q. On the first of December, 1922, do you recall seeing your husband and his father outside of that home? A. Yes, sir.

40 Q. Tell the circumstances of that to the Court and Jury. A. On that day I had been down to mother's for dinner. That evening on my return

*Lillian Hunke, Plaintiff, Direct.*

I had unlocked the outside lobby door, and as I turned around I noticed my husband and his father coming—it seemed from the janitor's entrance with a bundle and suit case. My sister ran up to the corner. I also ran after him with my baby. I also saw him. 10

Q. Did your father-in-law say anything at the time? A. No, he tried to get out of the way.

Q. You swore out a warrant for your husband in November, 1922? A. Yes, sir.

Q. Was your husband arrested thereafter?

Mr. Burke: That is all admitted; that is on the record.

Mr. Fallon: I offer the record contained on Page 275 of the minutes. I will read it into the record: 20

“p. 275. Q.S. September 22nd. Entitled State v. Harry Hunke, desertion. December 11, 1922, Defendant being charged, pleaded guilty, and is continued on bail, for sentence. Judge Lazarus.”

The next is: “December 12th, defendant being charged, pleaded and withdrew plea of guilty; parolled in custody of officer. Judge Lazarus.” 30

“January 25th. Defendant is ordered to pay the sum of \$20 per week, through the probation officer. Furnished bond of \$1,000. Defendant parolled in custody of probation officer.

Judge Lazarus.

This is a *capias* issue.

The Court: With return? 40

Mr. Fallon: Without return.

*Lillian Hunke, Plaintiff, Direct.*

Q. On November 28, 1922, will you tell the Court and Jury whether you saw your husband, and if so, under what circumstances, and where?

A. I knew at the time that there was an opening of the Capitol Theatre. My father-in-law was  
10 connected with that. I knew he would be there because of my father-in-law being interested. They were looking for this opening and I was almost certain he would be there. I waited outside of the home and saw him come out.

Q. Which home? A. Hunke, Sr.

Q. What did you do after that? A. I saw my husband come out with his people. He got into the limousine. I immediately called up Police  
20 Headquarters and Cash came down.

Q. Is he a police officer? A. I believe he is a Lieutenant. He accompanied me up to the theatre. After the performance my husband came out with his people and he was placed under arrest.

Q. Who did he come with? A. Mother and father and two sisters.

Q. After that did you see your father-in-law and your husband here in the court house at the  
30 time your father-in-law had something before Judge Lazarus? A. Yes.

Q. Do you recall the circumstances? A. He came down here with the understanding—

Q. What was said? A. He said he was going to give me \$20 a week.

Q. Who? A. Harry.

Q. Describe what the father-in-law said. A. He wouldn't give bond.

40 Q. Before Judge Lazarus the defendant Hunke — A. Judge Lazarus wanted—

Mr. Burke: I object.

*Lillian Hunke, Plaintiff, Direct.*

Q. What did Edward Hunke say? A. He said he wouldn't give his bond.

Q. Did he say anything else, other than that, that you remember? A. I don't remember.

Q. Your father-in-law was with his son before Judge Lazarus? A. Yes. 10

Q. Once or twice? A. I believe twice.

Q. Was Mr. Burke there, also? A. Yes.

Q. I show you a couple of envelopes, and ask you if these envelopes you can identify, and tell us what they have reference to. There are some papers— A. Checks were enclosed in these— check in each one, drawn on the Guttenberg Trust Company, as I said before.

Q. Whose check? A. Checks from my husband. 20

Q. This handwriting on the envelope is whose? A. Harry's.

Q. This handwriting on the return, "Harry Hunke, Weehawken" is that your husband's handwriting? A. Yes.

Q. This other envelope, addressed the same, is that his handwriting? A. Yes.

Q. Whose writing is that on the inside? A. My husband's. 30

Mr. Fallon: I offer these envelopes and papers in evidence.

Mr. Burke: For what purpose?

Mr. Fallon: As having been received from her husband, with the postscript "West New York".

Mr. Burke: The envelope shows that that "Harry" was stricken off and written over. 40

The Court: It may go in.

*Lillian Hunke, Plaintiff, Direct.*

Mr. Burke: Objection.

(The paper was received in evidence and marked "Plaintiff's Exhibit No. 1" of this date.)

10 Q. Prior to your husband's leaving you what was your condition of health? A. I was in very poor health. I was worried sick.

Q. After your husband left you, what was the condition of your health? A. I was home with my parents; they had to take care of me. I was unable to work.

Q. Was your health better or worse after that? A. Worse.

20 Q. Was your child sick at the time your husband left you? A. Yes, sick a number of times the following June, 1923.

Q. At that time did you send your sister up to see your father-in-law, Edward Hunke? A. Yes, sir.

Q. Did your sister report to you? A. Yes, she did.

30 Q. I show you a card of William H. Kennedy and ask you if you received that card from Mr. Kennedy. A. Yes.

Q. Did you receive that from him at the time you saw him in Jones and Baker's in New York, if you recall? A. No, I received that when I called at his office up-town.

Q. Where was his office up-town, if you remember? A. I believe around 27th Street.

Q. I ask that this be marked for identification.

40 (The article was marked "Plaintiff's Exhibit No. 2" for identification.)

*Lillian Hunke, Plaintiff, Cross.*

Q. Did you receive any moneys from your husband since January, 1923? A. No, sir.

Q. Have you since January, 1923, endeavored to locate your husband? A. Yes, sir.

Q. Has Mr. or Mrs. Hunke, at any time, since January, 1923, inquired of you about your husband or your child? A. Not that I know of. 10

Q. Did they inquire of you? A. No, sir.

Q. Did either one of these defendants, at any time, see the child, so far as you know? A. No, sir.

Q. Did they call at your home where they knew you lived, to see the child? A. No.

Q. While you and your husband were living together, about Christmas Time—did your parents-in-law send gifts to the house to their son? A. Yes, always. 20

Q. Did they send any gift to you or the child? A. Never.

Q. What is the condition of your health now? A. I am not very strong; I worry a lot.

Q. What has been your condition since your husband left you, as to health? A. Poor health.

Q. Were you in love with your husband at the time he left you? A. Very much. 30

Q. Have you ceased to love him up to this moment? A. I still think an awful lot of him.

Q. How long had you known your husband before your marriage? A. Two years.

Q. How long had he courted you before marriage? A. About two years.

*Cross Examination by Mr. Burke:*

Q. You know that Harry is interested in at least one other woman? A. No, sir. 40

*Lillian Hunke, Plaintiff, Cross.*

Q. You don't know that? A. No, sir.

Q. You have no idea of anything like that? A. No, sir.

Q. When he would go out at night and stay out at night he would tell you that he had been  
10 to his parents' house. Is that right? A. Yes, sir.

Q. You and Harry went to a lawyer named Hollander, didn't you? A. No.

Q. You never went to see a lawyer named Hollander? A. No, sir.

Q. A lawyer named Hollander talked to you and Harry, didn't he? A. No, sir, never.

Q. Do you know a man by the name of Kennedy? A. Yes, sir.

20 Q. What is his job? A. He was, well, I believe he was Chief Accountant, or a position higher than my husband's in Jones and Bakers.

Q. Where is Jones and Baker? A. 50 Broad Street, New York City.

Q. Did you see Mr. Kennedy about your husband? A. Yes, sir.

Q. What did Mr. Kennedy tell you?

30 Mr. Fallon: I object to that on the ground that it is inadmissable and immaterial.

The Court: I will admit it.

40 The Witness: Why I asked him when he left and he told me that he had left and that he didn't say a word about it. He told me that his mother and some woman accompanying her—an aunt—had called every day at this Jones and Baker place of business, and had asked Mr. Kennedy that in case he heard from Harry and re-

*Lillian Hunke, Plaintiff, Cross.*

ceived the money he owed Mr. Kennedy that he should not let me know where Harry's whereabouts were.

Q. Didn't you have some talk about a woman?

A. I knew of no woman.

10

Q. But you had some talk about a woman with Mr. Kennedy, didn't you? A. No, sir.

Q. Didn't Mr. Kennedy tell you how the boys used to make fun when the 'phone rang? A. Kennedy said nothing about any jokes, about the boys joking. I had no information to base upon—

Q. What did the boys joke about? A. Mr. Kennedy said he didn't pay any attention to what the fellows joked about.

20

Q. What were they joking about? A. I don't know.

Q. While Mr. Kennedy said to you that he didn't pay any attention to what the fellows were joking about, what was that something that you didn't know? What did he say? A. Who? Kennedy?

Q. Yes. A. I don't remember. I was only over there to see if he knew where my husband was. That is all I was interested in.

30

Q. He told you when you asked if he knew where your husband was, that he, Kennedy, didn't pay any attention to what the fellows were joking about. You had no idea at all, about that?

A. He could give me no information.

Q. You had no idea what that was about? A. No, sir.

Q. Didn't you ask Mr. Kennedy what it was about? A. Of course, I asked him what it was about.

40

*Lillian Hunke, Plaintiff, Cross.*

Q. What was the joke about then? A. I don't know.

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AFTERNOON SESSION.

10

Q. You have had time to think. Will you tell the jury whether there was any talk between you and Mr. Kennedy about a woman? A. Mr. Kennedy mentioned that he had heard the fellows joking about the different ones—about girls. I asked him if he could link it up to tell what girl was calling. I thought maybe in that way I could get some information. He said it was no  
20 girl in particular outside of a girl by the name of Perdie, I believe he said. That is all I know about it. I believe I spoke to my counsellor about this, and either he or somebody communicated with Mr. Kennedy and found out. I don't remember just exactly, but I believe I found out she was a cashier in some restaurant he used to eat at and merely pass the time of day because he was eating there frequently. Other than that I don't  
30 know of any other thing to connect up with my husband.

Q. So all the time you were telling this Court and Jury that there wasn't any joke about a woman; that you didn't know what he joked about—through a mistake?

40

Mr. Fallon: I object to whether they talked to anybody outside or not. There were no definite names mentioned; only the name of some girl known as Perdie.

*Lillian Hunke, Plaintiff, Cross.*

Q. What I mean is that when you told this jury there was no talking about women—you didn't know what the joke was about? You were mistaken in that? A. Yes.

Mr. Fallon: That is a wrong interpretation of the testimony. She was asked whether she talked to this man about a woman and she said no that she never did. 10

Q. Do you mean to tell this jury that what you mean when you say you didn't talk about women is that when you say you didn't talk about women that he did talk about women? Is that right? A. I couldn't talk about any one I had no information about. I was looking for information. 20

Q. Didn't you go over and look for information about women? A. No, sir, I went over to see if I could find out about my husband; he had left me, and I wanted to know if Mr. Kennedy knew his whereabouts or had heard of him.

Q. At that time did you have any talk with Mr. Kennedy—did you hear him talk about women? A. Well, I am telling you what he said. He said there was— 30

Q. Yes or no. A. Yes.

Q. And you didn't take somebody with you when you went to see Mr. Kennedy? A. My sister was with me.

Q. That is all? A. The first time, yes.

Q. It don't make any difference if it was the first or second time. When you asked to see Mr. Kennedy, didn't you have somebody with you besides your sister? A. No, sir. 40

*Lillian Hunke, Plaintiff, Cross.*

Q. Didn't you have a man named Cash? A. The second time.

Q. What do you mean the second time with Cash? A. I went there twice I am telling you—the first time I was alone with my sister.

10 Q. I have no desire to be imperious with you at all, in any way. I thought I made myself perfectly plain. I said any time that you went to see Mr. Kennedy didn't you have some one, other than your sister with you? A. Yes.

Q. Who was that man? A. Lieutenant Cash.

Q. What is his business? A. Lieutenant of the North Bergen Police.

20 Q. What was he over for with you? A. He knew my husband on account of arresting him the night of the Capitol performance. He was looking for him; he was missing. He told me if he could learn anything of his whereabouts he would try to get him for me, so I went over there hoping to find out something about him. I took him with me. I couldn't go alone.

Q. There was talk then up to that point about women or a woman? Is that right? A. Nothing that I could base anything on.

30 Q. Did Mr. Kennedy not tell you that women called up there, all the time, for Harry? A. No.

Q. Nothing like that was said? A. No.

Q. Did he or did he not tell you that when a female voice came on the 'phone that all the young fellows rushed to the 'phone to kid the girl? A. He did say that they used to joke together about the different girls. He never mentioned that he received any telephone call for him personally.

40 Q. But he did say that they—the men—joked about all the girls? A. Yes, sir.

*Lillian Hunke, Plaintiff, Cross.*

Q. You knew that before lunch? A. You didn't ask that.

Q. You also knew that Harry didn't get \$70 a week, but \$50 a week. Didn't you? A. No, sir.

The Court: Is that what you mean or what the lady means? 10

Q. You testified that Harry's salary was \$70 a week? A. Yes, sir.

Q. Is that true? A. Yes.

Q. Don't you know that he got \$50 a week? A. From Jones and Baker and \$20 a week for accountant work that he did in the evening, when he lived in New York; that made \$70. 20

Q. From whom did he make \$20 a week? A. From a butcher, a party by the name of Louis Wagner.

Q. Where? A. In New York,—Ninth Avenue in the neighborhood of 53rd Street and 9th Avenue.

Q. Was he paid by the week by Wagner? A. That I don't know; I never saw the check he got.

Q. Am I correct when I ask you if you testified that he got a salary of \$70 a week. A. He got \$70. 30

Q. Certain of that? A. Why certainly.

Q. Didn't he get a salary— A. He worked in Wagner's for \$20 and that is considered part of his salary.

Q. He drew a salary from Wagner? A. Yes.

Q. He audited the books once in a while. A. Three times a week.

Q. At a stated salary of \$20 a week. A. Yes. 40

*Lillian Hunke, Plaintiff, Cross.*

Q. When you told us that he got a salary of \$70 a week you meant \$50 a week from Jones and Baker and \$20 a week from Wagner. Right? A. Certainly.

Q. You are sure of that? No doubt? A. Absolutely.

Q. Do you want to change that in any way? A. No, sir.

Q. You told Mr. Fallon that you didn't know your husband was in debt? A. Yes, sir, I didn't know.

Q. Mr. Kennedy will you stand up, please. (A man stood up in the court room.) Don't you know that your husband was in debt and that he had to pay interest on \$250? A. You asked me when he was in debt. In October, you said. His mother said you have so many debts. She said, "Don't you know he was in debt?" That was in January.

Q. I am asking you if you knew your husband was in debt?

Mr. Fallon: I object to that your Honor.

Mr. Burke: I want to see if you are truthful.

Mr. Fallon: I object to that as very improper.

Mr. Burke: She has been untruthful.

The Court: That is an unfair statement by counsel.

Q. At any time at all was your husband in debt, to your knowledge? A. I didn't know that; not until I visited Kennedy in January.

*Lillian Hunke, Plaintiff, Cross.*

Q. When you visited Mr. Kennedy, did you know he was? A. Only what he told me. My husband never told me that he had bills out.

Q. Did you ever hear of a company called the Morris Plan? A. No, sir.

Q. You didn't know at any time that your husband had borrowed money on the Morris Plan? 10

A. No, sir, outside of what Mr. Kennedy told me in January. If true that must be—

Q. You did know it at some time? A. In January, yes.

Q. In January, when? A. When I called at Mr. Kennedy's office, after my husband had disappeared.

Q. What year? A. 1923. 20

Q. So that you knew in January, 1923, that your husband was in debt—had borrowed money on the Morris Plan?

Mr. Fallon: I object. All she knows is what Kennedy told her.

The Court: Question her and find out.

Q. What did Mr. Kennedy say to you in January, 1923? A. He said he loaned some money, I believe. It was some matter between Kennedy and my husband. 30

Q. Didn't he tell you the name of the company? A. He said he was to make good if my husband didn't make good.

Q. Kennedy had guaranteed the loan? A. Yes.

Q. Did he tell you to whom he had guaranteed— A. No, I never seen any papers.

Q. Did Mr. Kennedy tell you? A. Yes. 40

Q. What company? A. I don't remember.

*Lillian Hunke, Plaintiff, Cross.*

Q. When you got your furniture didn't Mr. Hunke give Greene Company some guarantee—Mr. Hunke, Senior? A. No.

Q. Sure? A. Absolutely.

10 Q. You never heard of Mr. Hunke guaranteeing anything to Greene Company? A. No, sir.

Q. Didn't you take this Lieutenant over to New York for the purpose of investigating this situation with reference to your husband and this woman? A. Yes, sir.

Q. So that when you went over to see Mr. Kennedy you took a man with you to investigate what your husband was doing with reference to other women.

20

Mr. Fallon: I object to that. There is no mention of his being with other women. I object to counsel to lugging in women in the plural and not woman.

The Court: He has a right to go into that.

Mr. Fallon: Exception.

30 The Court: When did this take place—this talk with Kennedy? A. In January, 1923.

Q. How long after you and your sister had been to see Mr. Kennedy? A. Just maybe two weeks.

40 Q. First you were with your sister and then with Mr. Cash? A. Yes, because Mr. Kennedy said he would try to do what he could to find out any information for me. Then I took Lieutenant Cash with me.

*Lillian Hunke, Plaintiff, Cross.*

Q. He said he would find out any information he could about what? A. About the disappearance of my husband. He said he was sorry because my husband owed money to me and the baby. He said he was heart-sick for me; that he felt very sorry. 10

Q. That is the same Kennedy that is here in court now? A. Yes.

Q. When you came over to New Jersey I understand you to say that you didn't go there alone, or with your husband to see a lawyer named Hollander? A. No, sir.

Q. Your answer is that you did not? A. No, sir.

Q. Do you know a lawyer named Hollander? 20  
A. Hollander was receiver for the apartment house I lived in; he came to collect the rent. I had no rent money for him. I explained it to him and he said, "You can stay in this apartment as long as you wish."

Q. Maybe Mr. Hollander came to your place about the rents or something like that? A. He collected rents.

Q. You saw him in your apartment? A. Yes, 30  
sir.

Q. Did you or did you not complain to Mr. Hollander or talk to him in any way about your husband going around with other women? A. Oh, no.

Mr. Fallon: I object to that as immaterial and irrelevant.

The Court: I will let it stand.

Q. You are sure? A. Yes, I don't know Mr. 40  
Hollander.

*Lillian Hunke, Plaintiff, Cross.*

Q. Then you never mentioned to Mr. Hollander anything at all about your husband going around with women or a woman? A. No.

Q. You live in an apartment house in Woodcliff? A. Yes, sir.

10 Q. What rent did you pay in New York? A. Forty-five dollars.

Q. Do you recognize the janitress of that apartment in court? A. Yes, that was the janitress (indicating woman in court room.)

Q. Did she ever talk to you or you to her about your husband going out with other women? A. Oh, no.

Q. Never did? A. Never did.

20 Q. You are absolutely sure about that? A. I never talked to her in any way except when I went for the baby carriage and bid her the time of day.

Q. You are sure that you never said anything to her about your husband going out with other women? A. No, sir, I did not.

30 Q. Now, in October, 1920, the night you went to Hunke Senior's you said that you complained then that Harry wasn't doing what was right.

Mr. Fallon: I object to that. There is no such testimony in the case. The witness never said such a statement.

The Court: I do not recall any such testimony. You can find out if that was said.

40 Q. Did you say anything to the janitress about Harry, in connection with other women? A. No, sir.

*Lillian Hunke, Plaintiff, Cross.*

Q. How did Harry and you get along there?

A. Very well.

Q. You and Harry never had a quarrel then while you were at this Woodcliff apartment? A. No, sir; no quarrel.

Q. Will you please stand up Mrs. Stone? Do you recognize her? A. Yes. 10

Q. She was janitress and superintendent of that apartment house? A. Yes.

Q. What floor did you and Harry live upon? A. First floor.

Q. What floor did the janitor live on? A. Basement.

Q. Didn't you, nearly every day, have a quarrel with Harry about other women? A. He worked during the day. 20

Q. At night, then? A. No, sir.

Q. You never chased him out with a butcher knife? A. No; positively not.

Q. Did Mrs. Stone appear on the scene when you and Harry were just talking? A. She was never in my house and we never stood in front of the door.

Q. She never appeared on any scene when you and Harry were quarreling or talking? A. No; never. 30

By the Court:

Q. How big a man is your husband? A. He was about five feet ten inches and weighed about one hundred sixty.

Q. How much do you weigh? A. I weigh 104 pounds. 40

*Lillian Hunke, Plaintiff, Re-direct.**Cross Examination by Mr. Fallon:*

Q. About this visit that you made to Mr. Kennedy to ascertain the whereabouts of your husband—will you state as far as you recall just what talk was had by you with Mr. Kennedy as to Mr. Hunke's visiting his father's or about that visit. A. Why Mr. Kennedy told me that Harry's mother, Mrs. Hunke, called at his office with her sister and she said that she had a gentleman with her and that he said not to worry about the money which Harry owed, but that he would make it all right—but that if he found out about Harry that he was not to tell his wife about his whereabouts.

Q. Up to the time that Kennedy told you about this so-called indebtedness of your husband had you any information or knowledge at all as to any indebtedness of your husband? A. Nothing.

Q. Were you at my office when Mr. Kennedy came to see me? Do you recall that? A. I was there that evening but I believe I just missed him.

30 *Re-direct Examination by Mr. Burke:*

Q. But you know that Mr. Kennedy was at your lawyer's office? A. Yes, sir.

Q. That is all.

By the Court:

Q. Did you ever hear that your husband had been attentive to any woman before the conversation you had with Mr. Kennedy? A. Never.

40

*Lillian Hunke, Plaintiff, Re-cross.  
Florence Fraser, for Plaintiff, Direct.*

Q. After your husband had left you? A. Yes.

Q. How long? A. I went there in January, 1923, to his business.

Q. That was the first that you heard? A. Yes.

Q. Did Kennedy say anything to you about your husband being attentive to other women? A. No, there was a joke about a cashier, but I didn't know anything that was going on. 10

Q. In your investigation to ascertain the whereabouts of your husband isn't it a fact that you and Lieutenant Cash went to Connecticut to locate the cashier? A. Yes, sir.

Q. When was it that you went up there with Cash? A. In March, 1923. 20

Q. Did you ever see this woman whom you refer to as the cashier? A. Never.

*Re-cross Examination by Mr. Burke:*

Q. I understood you to say that you still think an awful lot of your husband. Is that true? A. Yes, sir.

30

FLORENCE FRASER, sworn for the Plaintiff:

*Direct Examination by Mr. Fallon:*

Q. You are a sister of Lillian Hunke, the plaintiff in this suit? A. Yes.

Q. You know Harry Hunke? A. Yes. 40

*Florence Fraser, for Plaintiff, Direct.*

Q. Were you accustomed to visiting your sister Lillian's house in Woodcliff before her husband left her? A. Occasionally.

10 Q. Were you there on a certain night in October, when her mother-in-law and herself were present, at a time when Harry Hunke came home late? A. Yes.

Q. Do you remember when it was that Harry Hunke was said to have been away from home—left home? Do you remember the month he left? A. October.

Q. October of what year? A. 1922.

20 Q. Was there a time when you went to the home of the Hunke's, you and your sister Lillian? A. I was with her there once.

Q. Were you there at the time—at the home of your sister Lillian's father-in-law, early one morning? A. October, 1922.

Q. What year? A. 1922.

30 Q. Tell this court and jury what you said to Mrs. Hunke and what, if anything, you saw? A. I went over one Sunday about seven or seven-thirty. I went up on the porch and rang the bell. Instead of opening the door and coming down, she raised the window and said, "What do you want?" I said, "Is Harry here?" She said, "No." I said, "Come down, I want to talk to you." She said, "No, I'm in my night dress." I said, "We are all women; let us in." I said, "Is Harry in there," and she said, "no." I said that I saw his top coat on a chair. She said, "Go home and go to bed." We thought—

40 Q. Did you call their attention to the top coat on the back of the chair? A. I told her after she had pulled the shade down. I saw the top coat—

*Florence Fraser, for Plaintiff, Direct.*

Q. Did Mrs. Hunke call out? A. Yes.

Q. Did you remain with your sister Lillian in her home any nights after the husband left her?

A. Yes, I did; I used to go up and see how she was getting along.

Q. You went over there? A. Yes.

10

Q. For how long a period? A. Up to the time she removed from her apartment.

Q. Toward the end of December 1, 1922, did you and Mrs. Lillian Hunke go home together? To her house at 9:30 p. m.? A. Yes, we had had dinner home at my house and we returned to the apartment.

Q. When you got to your sister's apartment what did you see? A. In the vestibule I just happened to turn around and I seen Harry and his father passing the door. I ran down after them; they had just turned the corner; turned north by Park Avenue.

20

Q. Did either one of them have anything in his arms? A. Yes, Harry had a suitcase.

Q. Where was your sister Lillian? A. She was with me; she was following as quickly as she could. She had the baby.

Q. Did she get to the corner before they were out of sight? A. Yes, she followed right after.

30

Q. Was there a time when you went to see Edward Hunke and ask his assistance for the baby? A. Yes, in July, 1921, I went to the Guttenberg bank and asked for assistance. The baby had been very ill. I went to a New York doctor; he said any local doctor was good enough. He was very bitter and angry toward me. That is all I got.

Q. Did he say anything of Harry on that occasion? A. He said, "If my wife had me arrested like Lillian did Harry, I would leave her, too."

40

*Florence Fraser, for Plaintiff, Cross.*

Q. Did he say anything about blaming anybody?

Mr. Burke: I object.

The Court: I think they have a right to that—without suggesting the answer.

10

Q. Was there anything else said at that time that you remember? A. I asked where Harry was; if he knew where he was. He said he didn't know anything about him.

Q. What was his manner toward you? A. Very angry and bitter toward me.

*Cross Examination by Mr. Burke:*

20

Q. You are the young lady who suggested bringing this suit? A. Which suit?

Q. This suit. A. Absolutely not.

Q. How large was this suitcase that the two men were getting away with? A. Regular suitcase size.

Q. What kind? A. A tan suitcase.

Q. Who was carrying it? A. One man.

Q. Which man was carrying it? A. Harry.

30 Q. Out of what kind of an apartment in the apartment house? A. At 31st Street.

Q. What floor was that on? A. The first floor.

Q. What time did you see this suitcase go out? A. Nine-thirty p. m.

Q. Had Harry been living with her there? Do you know? A. He wasn't living there. He came there to get his belongings.

Q. You saw them go out with a suitcase? A. Yes.

40 Q. What date was that on? A. December 1, 1922.

*Florence Fraser, for Plaintiff, Cross.*

Q. Harry had been living in the Woodcliff Apartment, since when? Do you know? A. He left on October 21st. I didn't see him any more after that.

Q. So then, a month and a half after Harry left—you just happened to be there and saw the two of them going out with a suitcase. That is true? A. I was boarding with my sister right after he left her. I wouldn't leave her alone. 10

Q. You just happened to see two men go out with a suitcase? A. Yes, I saw them.

Q. How many rooms are there in this apartment? A. Three rooms.

Q. You didn't see Harry in the apartment getting the suitcase? A. No, I did not. 20

Q. There is a main hall? A. There is a main hall.

Q. Then you enter the apartment? A. There is a vestibule, you have to go up eight steps before opening the inside door; then you get in the inner hall—I mean to the street. You can see anybody passing there from where we stood.

Q. How many entrances and exits are there from the apartment? A. Two from the front.

Q. I mean in your apartment. What room did you enter the private hall? A. No private hall. 30

Q. The only door from that little private hall out into the main hall—there is only one door? A. Only one door.

Q. Where was Mr. Hunke and Harry when you saw them? A. He was just passing the front entrance—the other side—the outside entrance, along on Thirty-first Street.

Q. The suitcase was closed? A. Yes. 40

Q. He had gotten out of the apartment? A. He didn't come from the apartment; he came from

*Florence Fraser, for Plaintiff, Cross.*

the side of the house, and moved past us, because right in the vestibule I looked out and saw him pass the door.

Q. You thought he was bringing clothes out?

A. Must have been in the suitcase; he was coming  
10 from the alley-way side of the house.

Q. When you tell this jury there were clothes in the suitcase, how do you know that. A. Must have been clothes in the suitcase.

Q. That is why you think— A. What else could he have?

Q. That is why you say— A. His belongings.

Q. You don't know, do you? A. That is all right—he must have had clothes in the suitcase.

Q. You didn't see them? A. What did he come  
20 back for?

Q. You don't know? That is what you surmise? Is that right? A. That is what I surmised.

Q. You are surmising? A. I knew he had clothes; his clothes alone.

Q. Tell the jury how you knew he had clothes in there? A. Clothes were not in his chifforobe. He must have taken them.

Q. When you say that his clothes were in his  
30 chifforobe and he must have taken them— A. In his bedroom.

Q. What room were you sitting in? A. I wasn't sitting.

Q. Well, then, what room were you standing in? A. I saw him through the glass; I saw him passing.

Q. What room were you in? A. At that time?

Q. At the time you saw him. A. In the vesti-  
40 bule of the apartment.

Q. Why did you go out to the vestibule? A. We had not gotten inside the house. We just walked

*Florence Fraser, for Plaintiff, Cross.*

in and opened the outside door, unlocked the inside door, when I turned around and saw him passing, and I followed, running after.

Q. Did you catch him? A. No, but I saw him.

Q. Why didn't you get him? A. I guess he was too far away to get. 10

Q. How far was he? A. About a hundred feet, but it was light enough to see him—to recognize him.

Q. But too far to get up to him, was it? A. Yes.

Q. That is what you thought? A. I said yes.

Q. You can't think of any reason, can you, why you surmised that Harry's clothes were in that suitcase? A. I am not surmising; I know what was in there. There was nothing left in the apartment of his belongings. 20

Q. That morning that you and your sister went up to Hunke's at half-past seven, this Sunday morning, Mrs. Hunke saw you? A. Mrs. Hunke saw me, yes.

Q. You asked if Harry was there every night? A. I did.

Q. What did she say? A. She said no.

Q. You have no reason to believe that Harry was there every night? A. I saw the top coat on the back of the chair. She pulled up the shade. 30

Q. You had no reason to? A. No reason to what?

Q. For the same reason you thought there were clothes in the suitcase, you thought that Harry was there? A. Yes.

Q. What reason did you have for thinking that Harry was in that apartment with his father and mother? A. I saw his top coat. 40

*Florence Fraser, for Plaintiff, Cross.*

Q. Before you went there, I mean; that was based on information? A. It was; I went over to his father and mother to inquire if he was there.

Q. In other words, because there were a mother and father, you blame them for having Harry there? A. Just came over to see if he was there.

Q. Because it was the mother and father; you blame them for having Harry there? A. We asked if he was staying there all the night.

Q. Did you suspect that he was? A. Yes, I did.

Q. You suspected because the father and mother were there. Isn't that right? A. I told you he was there because I saw his top coat.

Q. I didn't saw after the top coat—I say before you went up there. What information did you have for thinking that he was there? A. Because he spent enough time there. He was over there every night.

Q. He was over there every night? A. Yes.

Q. Why do you say that to this jury? A. He was there every night and I am telling the truth.

Q. Did you ever see Harry there? A. No, I did not.

Q. Do you remember telling this jury that Harry was there every night? A. My sister speaks the truth and she did know.

Q. You know that this is a law suit? A. Yes, I understand.

Q. Why do you say to the jury that Harry was there every night, at his father's and mother's house? A. Sister said he was there.

Q. Who said? A. Mrs. Hunke, junior.

Q. Your sister? A. She must have known or she wouldn't say—

Q. You say that Mr. Hunke was there every

*Florence Fraser, for Plaintiff, Cross.*

night; your sister said so. She wouldn't know it.

A. He spent his evenings there she said.

Q. Did you have any information? A. I told you what I know.

Q. Did you have any information that he, Harry, was kept there every night, as you say, by his father and mother. If you have, give it to the jury, for, of course, you will be leaving this stand— 10

Mr. Fallon: I object to that every night. She said he was there, but not every night.

The Court: Objection sustained. She has not said that.

Q. Did you have any information? A. I told you everything, that is all I can tell—what my sister told me. 20

Q. Did you have any information that Harry was there, at his father and mother's house? Yes or no. A. Why, yes.

Q. What was the information? A. The information came through my sister.

Q. What information did she give you? A. That he went over there nights and stayed there until about midnight, and came home. 30

Q. Then he came home? A. Up to the time he deserted her.

Q. So you don't know anything about his being there nights, except what you said? A. I never lived with my sister, I don't know what happened every day.

Q. You have no information, yourself? A. Only what I told you.

Q. Only what she told you? A. That is right. 40

*Florence Fraser, for Plaintiff, Cross.*

Q. You come into this apartment of your sister's from outside steps? A. The front entrance.

Q. Outside steps? A. One step before you get to the first door and then you go up eight steps before the inside door is reached, and then into the  
10 private hall.

Q. After you open the outside door there are eight steps up? A. Yes, right.

Q. This space that constitutes the vestibule is between two doors. Is that right? A. Yes.

Q. Did you see how they left the apartment, what way? A. I said they didn't leave by the front entrance, coming past us. They came from the alley-way, I said.

Q. Don't you know that there is no possible  
20 way of getting from the apartment but— A. Yes, the cellar. They probably was down the cellar, coming from there.

Q. There is no way you can get to the cellar from the apartment? A. Not that I know of.

Q. There isn't any way to get to the cellar from the apartment? A. I am just telling you what I saw.

Q. You and your sister didn't make any im-  
30 proper gestures at the Hunkes? A. What do you mean?

Q. Anything improper or say anything im-  
proper? A. When?

Q. When you went to see if Harry was there that night? A. Absolutely no; we only went to see if Harry was there.

Q. That is all.

*Mary Fraser, for Plaintiff, Direct.*

MARY FRASER, sworn for the Plaintiff.

*Direct Examination by Mr. Fallon:*

Q. Mrs. Fraser you are the mother of Lillian Hunke? A. Yes, sir. 10

Q. Also the mother of Florence Fraser? A. Yes, sir.

Q. Do you recall about the time that Harry Hunke left his wife and child? A. Yes, sir.

Q. Did you after that go down to Hunke, senior's. A. Yes.

Q. How long after Harry left his wife and child? A. I don't know exactly; a few days later.

Q. Who did you see there? A. Mrs. Hunke and her daughter. 20

Q. What talk did you have with Mrs. Catherine Hunke? A. I told her that I came to see her about her son, to see if we couldn't get them together again. She said what could I do about it? She said, "I can't do anything about it." I said, "That is no way to talk, you ought to try." She said, "What can I do?" I said, "If you can't do anything, his wife will have to go to law about it." She replied "If you want to do that, we will fight you and her, too." 30

Q. That is all.

*Lillian Hunke, Plaintiff, Recalled, Direct.*

LILLIAN HUNKE, Plaintiff, recalled.

*Direct Examination by Mr. Fallon:*

10 Q. I show you three photographs, the first one a large building, and ask you to tell us whether that photograph depicts any building that you are familiar with. A. That was home; Woodcliff Apartment.

Q. What was the number? A. One hundred, Thirty-first Street.

Q. Does this picture fairly depict the front of the building? A. That is the front.

Q. I offer that in evidence.

20

Mr. Burke: No objection.

(Received and marked Plaintiff's Exhibit Number 1, this date.)

Q. What is this? A. Side of the building.

Q. Is that the side upon which your apartment was located? A. Yes.

Q. I ask you to indicate by this picture where your bedroom was. Does it show that? A. No.

30 Q. Will you describe these windows that lead to—that are shown in this picture of your apartment. A. My apartment is here (indicating).

Q. You are referring to the first window to the right of the picture? A. The bathroom.

Q. Which is next to the window? A. Kitchen.

Q. These two or three windows—where do they lead to? A. Dining room.

Q. There are some windows in the basement, shown in the picture. Where do they lead to?

40

A. The laundry.

*Lillian Hunke, Plaintiff, Recalled, Cross.*

Q. I show you a picture, number three, and ask you if you will tell us what that picture indicate?

A. These are two windows.

Q. The two pictures—two windows to the right of the picture? A. Yes.

Q. Do you refer— A. Two windows in by bedroom. 10

Q. This window to the left of your apartment? A. No, sir.

Q. This pane below. What does that indicate? A. This is the court. You come in through here. That is where we used to take the carriages. Nobody lived back there.

Q. The opening in the back of the picture? A. Yes. 20

Q. I ask you what part of the basement the janitor had his apartment? A. In the front.

Q. How far distant was the janitor's apartment from your bedroom? A. Her apartment was beside of the house.

Q. How far from the court of alley-way from your bedroom was it? A. I don't know how many feet. I know it was around the other side; the other side of the building, this picture was. 30

*Cross Examination by Mr. Burke:*

Q. If a person were in the janitor's apartment it would be pretty difficult to hear a conversation in your apartment? A. Yes, sir, I live on the side.

Q. If you and Harry had an ordinary conversation, or talked fairly loudly, it would be possible to be heard in the janitor's apartment? A. Not in the apartment. 40

*Lillian Hunke, Plaintiff, Recalled, Cross.*

10 Mr. Fallon: I intended to have a deposition of Edward Hunke, between Lillian Hunke and Catherine, before Supreme Court Commissioner on September 2, 1925, read, as to questions and answers. This was to have been testified to as having been given by her. Mr. Burke has consented as to its materiality. This was taken by Mr. Ransome.

Mr. Burke: If Mr. Ransome says that is so, I shall agree to it.

20 Mr. Fallon: This question was asked of Mr. Edward Hunke: "You heard your wife tell your son Harry it would be a good thing to put your things in storage and go back and live with your parents?"

Answer: "Live with his parents? I never heard of such a thing as that. What I did hear her say to him was that he had many debts and that he couldn't pay them but if they put the furniture in storage and she went to stay with her parents for awhile, they could both work and pay off the debts."

30 "Q. Did you ever suggest that they put their things in storage and come and live with you? A. I did not; not myself."

"Q. Did anybody ever suggest it for you? A. Not for me."

"Q. With your knowledge? A. No."

40 "Q. Didn't you at the time there was talk of placing the furniture in storage suggest that they each go to work, and she to her parents, and your son come to your place to live? A. I didn't suggest anything."

*Edward Hunke, for Plaintiff, Direct.*

“Q. Who did suggest it? A. My wife suggested it.”

“Q. But that is what was suggested? That she put the things in storage, both go to work and go to live with her parents?”

A. No, she suggested that both go to live with her parents, each go to work, and put the furniture in the back of her house.” 10

That is the testimony of Edward Hunke in these proceedings.

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EDWARD HUNKE, sworn for the Plaintiff: 20

*Direct Examination by Mr. Fallon:*

Q. I show you two envelopes, marked “P-1” in this case and ask you if you recall identifying these two envelopes of your stationery at 164, 24th Street, Woodcliff, attributing the time and post-mark as of January 23rd? A. They were envelopes that I had in the house; if Harry wanted an envelope he used them. He might have had them in his pocket. That is all I know. 30

Mr. Fallon: The plaintiff rests.

Mr. Burke: I respectfully make my motion for a non-suit. I very respectfully submit that we are entitled to a non-suit because there is no proof in this case of any malice on the part of Mr. Hunke, senior, or on the part of Mrs. Hunke. 40

*Edward Hunke, for Plaintiff, Direct.*

10 I make my motion for a non-suit for both  
—by that I mean both or either of them. I  
represent both. So far as Mr. Hunke is  
concerned, there is absolutely nothing con-  
cerning him in the case, at all. Not a single  
thing.

I call your Honor's attention to the case  
of Powers against Sumner. It is a well es-  
tablished case.

Then there is the case of Mosier against  
Koeneby, 193 Massachusetts. Also the case  
of Hutchenson against Peck by Chancellor  
Kent, and the Aldridge against Aldridge  
case—a New York case.

20 There are cases on cases, if your Honor  
please, that I might quote in this case.  
There is not one scintilla of proof that this  
boy left his wife as a result of any advice  
or contact with his father; not one scin-  
tilla. The only conversation she had was  
with them both when Lillian Hunke was  
advised to go out and work. There is no  
proof that this was actuated by ill will or  
malice. There is no evidence of enticement  
or malice on the part of either one of them.  
30 I make this motion for both.

I most respectfully submit that we are  
entitled to a non-suit.

40 Mr. Fallon: The question of lack of good  
faith can not be rigidly applied. It is an  
applied general denial—no justification.  
There is not a word that they intended this  
as a real justification of good faith—a bene-  
volent purpose. This is not malice in the  
narrow sense intended by counsel.

*Edward Hunke, for Plaintiff, Direct.*

In 46 L.R.A., page 465, it says that parents have greater weight than strangers in suits of this character. In this book are cited plenty of cases. That is under the heading of "General."

There is another heading of "Parents". 10

I submit that there is ample in this case to show that conduct of these people to this young couple implied malice and that the separation resulted from their advice to go and live apart.

Your Honor, I believe it was testified to that on October 12th, Columbus Day, the statement was made in the home of Hunke, senior, by Harry Hunke to his wife: "Do not pay any attention to them, I can pay more rent if I want to." 20

The testimony here is ample to warrant this jury in saying that the conduct of these parents at the various instances alluded to was not what it should have been. I call it a little different from advice—I would call it an unwarranted usurpation of the privileges of this married couple. The proof of this is that she was living happily in New York, but when they came to New Jersey and began to go to the parents, something happened. After that he began to show a coldness towards his wife, a lack of affection. 30

It was said in the opening that the defendant went to the house of this young woman and asked on that occasion that they break up their home and go to work, each for the other and get out of debt. The 40

*Edward Hunke, for Plaintiff, Direct.*

10 plaintiff denies that. That night when the old lady took her son to one side something was said—what, we don't know, but the next morning he got out and deserted her. What is the cause of the desertion, as previously asserted, unless not in the presence of Mr. Edward Hunke? Did this talk she had with her son this night result in his leaving the next day? Was it the cause of the breaking up of the home? Whatever was said was the cause of the breaking up of the home.

20 We know that when the sister went to inquire for Harry and pointed to his coat on the back of the chair, the mother said, "Go home and go to bed."

The jury, I respectfully request are the ones to decide this case.

This is a case of parents causing a desertion.

I respectfully submit that this is not a Court case, but a jury case.

30 I am going to prove direct malice so clearly that there will be no mistake about it. People going about doing wrong do not telephone what they are doing; they do it in a sinister manner. I say sinister manner—breaking up a happy home and this manner will be indicated by the testimony given here. The determination and the machinations of this mother and father putting these things into the mind of the son is what caused him to leave his wife. It has been testified that they were living happily and there is no indication of why this man  
40 went away except that he deserted his wife.

*William H. Kennedy, for Defendants, Direct.*

I respectfully request that the non-suit be denied.

The Court: I think it is a jury question. I refuse to grant a non-suit.

Mr. Burke: Exception.

10

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WILLIAM H. KENNEDY, sworn for the Defendants.

*Direct Examination by Mr. Burke:*

Q. Where do you reside? A. Seventy-five Ardale Terrace, East Orange. 20

Q. What is your business? A. I am an accountant.

Q. By whom are you employed? A. At present?

Q. Yes. A. Henry L. Doherty, 60 Wall Street.

Q. Were you employed by Jones & Baker? A. For about eight years.

Q. In what capacity? A. Accountant—Auditor.

Q. Was Mr. Harry Hunke employed there, too? A. He was a bookkeeper there, yes. 30

Q. Were you there, too? A. Yes.

Q. Do you know Mrs. Hunke, the plaintiff in this suit? A. I know her—not well—I am acquainted with her.

Q. Where did you see her? A. I saw her twice when she visited me at the office, 50 Broad Street, and once at Twenty-eighth Street.

Q. What did you say to her and what did she say to you when this was first brought up? A. Her visit to me in regard to this case? 40

*William H. Kennedy, for Defendants, Direct.*

Q. Yes. A. I can't remember definitely as to dates; that is almost impossible.

Q. Do you know the year? A. I will say that it was the latter part of 1922 or the first part of 1923.

10 Q. That was while Harry was employed by Jones & Baker Company? A. To the best of my belief he had left us just about that time.

Q. You were then with Jones & Baker? A. Yes.

Q. Will you tell us what was said by you and Mrs. Hunke?

Mr. Fallon: I object; that is augmentative and for the purpose—

20 Mr. Burke: It is for the purpose of telling how Harry and she got along.

The Court: Find out.

A. To the best of my recollection, Mrs. Hunke called on me with the distinct idea of finding out the name of a woman that Harry—

Mr. Fallon: I ask that that be stricken out.

30 The Court: Strike it out.

Mr. Burke: Under the rules we are only entitled to get from a witness what you said to her and what she said to you.

By the Court:

Q. Who was with you during this first conversation? A. The first time her sister was with her.

40 Q. Then what was said? A. It is hard to reconstruct the actual conversation. It was only generalities, that is the best I can do. Mrs. Hunke

*William H. Kennedy, for Defendants, Direct.*

came to me to find out if I knew where Harry was. I did not know. I was anxious to find out myself at the time. During a conversation I had with Mrs. Hunke the question came up of why he had left her. I didn't—

10

Mr. Fallon: I object to the conversation.

The Court: Yes.

Q. Give us the conversation as nearly as you can remember? A. I can relate it in a way, but to give the actual words, that is impossible.

Q. Just your best recollection. A. That is what I am trying to do. You understand it was a general conversation. These things were spoken of both by Mrs. Hunke and her sister and myself. The whole sum and substance of it was—

20

Mr. Fallon: I object.

The Court: Yes.

Q. What did she say as near as you can tell? A. I was going to find a way to say it that would be suitable.

Q. Don't give us a conclusion. A. It is not a conclusion. I am trying to give you it in a general way—the conversation.

30

Q. Give us the conversation as you remember it.

Mr. Fallon: But not a conclusion.

The Court: The jury must draw that from the conversation.

The Witness: I am trying to tell what I know about it, in a way to be understood. The conversation we had—the reason she came to me, as she stated—

40

*William H. Kennedy, for Defendants, Direct.*

Mr. Fallon: I object to that if he is going to state a conversation. The jury then—

The Court: You may tell us what you said and what she said.

10 A. Mrs. Hunke said to me that the reason she called with her sister was to see if I knew where Harry was. To that I had to tell her that I did not know. She wanted to know why I was anxious to find him and I told her that shortly before I had guaranteed some notes for him, and it looked as though the guarantees would be brought back and that I would have to pay them. That was the reason that I was interested at the time. She said  
20 to me at the time that Harry had not been home at some times and in a general way she said that he had deserted her. I expressed my sorrow and told her that I would try to locate him, and that if I did, I would let her know. I never heard where Harry was. Therefore, I was not able to indicate as to his whereabouts. At the time she was there there were several topics of conversation, and one of them was—

30 Mr. Fallon: I object.

The Court: Yes, only your conversation.

The Witness: (continuing) the reason for his leaving, and the only thing that I could tell her at the time was that I had talked to Harry and before I had talked to him I had—

Mr. Fallon: I object to talking to Harry unless he told him—

40

*William H. Kennedy, for Defendants, Direct.*

By the Court:

Q. You told this lady about this? A. I told Mrs. Hunke and the sister that I had—to use a slang expression—that I had to call Harry down for things going on in the office. I possibly told her that he was—I don't know just what I told her, but she wanted to know just what I knew and I told her that there had been women, presumably calling on the 'phone for Hunke, and— 10

Mr. Fallon: I object to that—that women were presumably calling on the 'phone.

The Court: I think he may tell what he told her.

The Witness (continuing): and that whenever the 'phone rang—so that it will be possible for you to understand how the 'phone was placed— 20

Q. Yes. A. There going to be a question—

The Court: Now, only what you told her.

The Witness: There was presumably a woman calling for Hunke at the office from time to time and it had got the point where the different ones answering the 'phone calls for Harry, started to kid the woman that was calling Harry. It got so noisy that I had to call him down and ask him if he wouldn't have her not call at the office. That was all of the conversation I had with Mrs. Hunke at the time. 30 40

*William H. Kennedy, for Defendants, Direct.*

Q. Did she ask if you knew who the woman was? A. Yes, but I don't know if it was at that time.

Q. Did you afterwards talk to her about the woman? About who she was? A. Later, some  
 10 little time later, Mrs. Hunke called again to see me. This time there was a man introduced to me as Detective Cash, who was hunting this woman that Harry was supposed to living with, as explained to me—

Mr. Fallon: I object to this.

The Witness: During the period between  
 20 the first and second call I had inquired and while I did not see this young lady to know her by name, I had seen the lady in question.

Mr. Fallon: I object to this.

Q. When the detective—Cash—came with Mrs. Hunke, did you tell him that you had in the meantime, inquired? A. That was the request  
 30 made on the first visit that I try to get information. As a result of that try I found out, with reference to the girl, that she was—

Q. Did you so tell Detective Cash? A. I imparted this information to Detective Cash and Mrs. Hunke on the second visit.

Q. Give us the conversation. A. The only conversation was that she had called to see if I had obtained any information. I imparted to them  
 40 that I had and they left me. In leaving me I believed they were going to follow up the information.

*William H. Kennedy, for Defendants, Direct.*

Mr. Fallon: I object.

The Court: Yes.

Q. Mr. Kennedy, did the lady's name appear in the conversation? A. I didn't know it.

Q. Did you know her occupation? A. Yes. 10

Q. What did you say to Mrs. Hunke about the occupation? A. I told her that she was a cashier in a lunch room a couple of doors from where we had our office.

Q. Did Lieutenant Cash hear that? A. Lieutenant Cash was there after the information.

Q. You said you made a guarantee to Harry. Did you tell Mrs. Hunke what company it was where he had got the money on your guarantee? A. I believe I did. 20

Q. Where? A. The Morris Plan.

Q. Did you mention the amount? A. Yes.

Q. What was the amount that you mentioned? A. Two hundred dollars.

Q. Did they make another visit? Did you see them again after that? A. I don't recall seeing Mrs. Hunke again at 50 Broad Street.

Q. Did you see Mrs. Hunke's lawyer, Mr. Fallon, after that? A. Not before I had seen Mrs. Hunke again. 30

Q. You had seen Mrs. Hunke again? A. Oh, yes.

Q. What was the conversation the third time? A. The conversation the third time was in my office. She called to see me. It was in regard to my engagement with Mr. Fallon at his office to talk over the prospects of the case she had against Mr. and Mrs. Hunke. 40

*William H. Kennedy, for Defendants, Cross.*

Q. Did you arrange to meet Mr. Fallon? A. I met Mr. Fallon in his office.

Q. Did you tell him what you knew about the case? A. In a general way.

10 Mr. Fallon: I object to that. If he told about the case—

The Court: That is too broad.

Mr. Fallon: I have no objection to telling what transpired with me.

Q. In any of these conversations that you had—did you talk about Harry being a gambler?

20 Mr. Fallon: I certainly object to his leading the witness.

The Witness: We didn't have any conversation in which Harry was called a gambler.

Q. Was there a talk— A. Yes, we talked about his gambling debts, yes.

Mr. Burke: That is all.

30 *Cross Examination by Mr. Fallon:*

Q. The only purpose of Mrs. Hunke calling to see you was to inquire as to her husband's whereabouts. Isn't that so? A. That I am unable to say—what her purpose was.

Q. That is all she expressed to you when she called to see you? A. No.

40 Q. When she called to see you tell us what she said.

*William H. Kennedy, for Defendants, Cross.*

The Court: Fix the time.

The Witness: The first time Mrs. Hunke and the sister called together to see me with the idea—

Q. Never mind the idea. Tell us what was said. I don't want the idea; I want the conversation. Please tell us what she said. A. As I said, I can't word for word. 10

The Court: As near as you can—the substantial conversation.

A. Mrs. Hunke came to me to find out where Harry was.

Q. What did she say? A. She asked me if I knew where Harry was. 20

Q. She hadn't met you before that? A. Yes.

Q. You were acquainted? A. Slightly.

Q. She came to you and said, "Do you know where Harry is?" A. That is right.

Q. Had she told you that Harry had not been home. A. She told me before of things—about Harry not being home. I don't remember what it was. 30

Q. In relation to her coming to see you on this first visit, did she say Harry had not been home?

A. Mentioned the fact that he had not, at times.

Q. Did she tell you that Harry had not been home and inquired to see if you knew where he was? A. She didn't give any particular reason at that time. I heard Harry was—

Q. You say that she did not ask you in your conversation? A. I wish I could give it to you in a way— 40

*William H. Kennedy, for Defendants, Cross.*

Q. You charge your mind with the conversation that you had with me and Mr. Burke? A. Oh, no.

Q. You saw Mrs. Hunke three times? A. Two or three times.

10 Q. With detective Cash once or twice? A. Once.

Q. Didn't you tell Detective Cash about this girl living with— A. I did.

Q. When, the first or second or third time? A. Only one time with Mr. Cash; they called on me to see me; only saw him once.

Q. You called at my office? A. Yes, at your request.

20 Q. When you called at my office, my only purpose was to see if you would verify any court statement made to me by Lillian Hunke that you had said to her that Mrs. Catherine Hunke came to see you and said to you not to worry about Harry, that she and her husband would be up, but that you should not tell Lillian, if you did find out? A. That was not.

30 Q. What was it? A. Your conversation was entirely whether I knew anything of interest at the trial.

Q. What was it? A. I only know the general import of the conversation.

Q. And what was that import as you have it? A. Some things stand out in the mind better than others.

Q. In the talks you had with Mrs. Hunke and with me, you didn't consider that that information would be helpful to us? A. I did not.

40 Q. Why did you give this card to Mrs. Hunke? Look at that card and see if it is not in your

*William H. Kennedy, for Defendants, Cross.*

handwriting. A. That is my card and my handwriting.

Q. What is? A. That.

Q. Do you live there? A. I live there.

Q. Is that your present telephone number?

A. No.

Q. Where did you live in Orange? A. West 41st Street.

Q. East Orange? A. Either Seventeenth or Sixteen Street; I don't recall it. I moved.

Q. Or have you been living on 41st Street?

A. Yes.

Q. Refresh your recollection? A. That is right.

Q. The telephone numbers below—what do they refer to on the card? A. Phone; I was at the 28th Street business at the time.

Q. You were with Jones & Baker? A. I was prior to that time.

Q. Jones & Baker, Brokers, went out of business? A. Yes.

Q. You received a letter from me, dated October 19th? A. I did.

Q. Have you got that letter with you? A. Mr. Burke has it.

Q. I ask Mr. Burke to produce it, please. Just identify the letter, if you will. A. I believe that is the same one.

Q. You didn't reply to it, did you? A. No.

Mr. Fallon: I offer that in evidence.

Mr. Burke: No objection.

(Received in evidence and marked "Plaintiff's Exhibit No. 6" of this date.)

(P-6 read to the jury.)

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*William H. Kennedy, for Defendants, Cross.*

Q. You were at 37 East 22nd Street, New York City, when you had a talk with Mrs. Hunke? A. At the time Mrs. Hunke called at my office the last time.

10 Q. Upon receipt of that letter you never acknowledged it by telephone or letter? A. No.

Q. You were not unfriendly with Mrs. Hunke's attorneys? A. No.

Q. Was there any reason why you should not acknowledge receipt? A. Yes.

Q. In your business it is the courteous thing to acknowledge receipt of letters? A. Usually.

Q. You think in this case there was some reason why you should not? A. There is.

20 Q. What is it? A. I believe in a lawsuit if you are under subpoena by the defense in this case that it would be improper proceeding to have any conversation with the complainant's attorneys, and for that reason I did not answer.

Q. You were not under subpoena October, 1926? A. I was told I was going to be.

Q. Were you under oath or were you not? A. No.

30 Q. That answer doesn't apply in this case. If you are under subpoena, you think you shouldn't answer a letter? A. In talking I was under the impression I would be subpoenaed. I had been told that I would be for the defendants.

Q. Didn't I tell you that I wanted to use you for a witness? A. You were number two.

Q. That fact that I told you I wanted to use you as a witness made no difference and you went to Mr. Burke later? A. He told me first.

40 Q. The talk that I had with you was about two years ago? A. That is an entirely—another proposition entirely.

*William H. Kennedy, for Defendants, Cross.*

Q. Isn't it a fact that you did not want to get mixed up in the case because the Hunkes would not pay you? A. No.

Q. Didn't you tell me that he promised you that you would get the money? A. No.

Q. Are you here under subpoena? A. No. 10

Q. Were you subpoenaed in this case at all? A. No.

Q. You came here voluntarily as a witness? A. Yes, sir.

Q. If the statement written in the letter—P-6 was in any wise untrue, why didn't you say so in justice to all parties and write to Fallon & Fallon and say that the statement was not true? A. As I said before I did not think it proper to have correspondence or intercourse with the plaintiff's attorneys. 20

Q. Did you write to Fallon & Fallon and say that it was not true? A. I did not give that any consideration.

Q. That is not the first letter you received from Fallon & Fallon? A. It is.

Q. Didn't you receive another letter, two years ago, to call at our office? A. No, sir.

Q. When you called at my office, Lillian Hunke was there? A. She was not. 30

Q. Can you give any idea of our conversation? A. That information was written and given to you when at your office.

Q. Are you willing to swear to that. I want proof. Will you swear, now, that that card was given to me? A. To the best of my belief that was. It was left with you in order for you to get in touch with me. 40

*William H. Kennedy, for Defendants, Cross.*

Q. Upon what do you base your opinion? A. I did not have the address or 'phone number; Mrs. Hunke did have.

Q. Did you also give her a card? A. I don't know.

10 Q. Isn't it a fact that you gave P-2 for identification, to Mrs. Hunke? A. That is the best of my recollection; I left it with you.

Q. What was your purpose in leaving it with me if you did not think you would be a witness on behalf of Lillian Hunke? A. After leaving you it was not settled whether I would be called.

20 Q. Didn't I ask you in my office with Catherine Hunke and you the things that are contained in this letter? A. Not that from me?

Q. Look at the letter and see if it is different. A. In this letter you make a statement that Mrs. Hunke, that the husband's mother, had called to see me and talked about her son and that she did not want me to make it known.

Q. Do you mean to say that did not state that? A. No.

Q. Didn't you tell that to me in my office? A. I did not.

30 Q. What business are you in now? A. Henry L. Doherty.

Q. How long have you been there? A. Since February.

Q. Are you married or single? A. Married.

Q. How long have you lived at your present address as given? A. Since December, last.

Q. How long had you known Harry Hunke? A. Prior to his leaving?

40 Q. Yes. A. I would say it must be close to seven years.

*William H. Kennedy, for Defendants, Cross.*

Q. He was your subordinate in some respects in your place of business? A. Yes.

Q. You testified that you told Mrs. Lillian Hunke and Detective Cash about two women that Harry Hunke was supposed to be living with. That is so? A. That is correct. 10

Q. Who was the woman? A. The cashier in the lunch room.

Q. You had no knowledge that he was living with her?

The Court: Yes or no.

A. It can't be given—

Q. How did you know? 20

The Court: Of your own personal knowledge.

Q. Did you make a statement to Mrs. Hunke that Harry Hunke was supposed to be living with women? A. You use the proper word; supposed to be; that is the only thing that I know.

Q. From what source did you get that supposition that he was living with her? A. Only gossip. 30

Q. It is difficult to prove gossip. A. That is what I tried to do.

Q. If you tell us from where this common gossip came from we can investigate it. Mention names; don't generalize; mention names. A. In the office in which I worked and Harry Hunke worked. He was one of four bookkeepers. They had four flat desks in the center of which was a 'phone. Any one of these four answered the 40

*William H. Kennedy, for Defendants, Cross.*

'phone. Any one of the four wanted would answer the 'phone. Everything went along in the orderly routine of the office work until, it was about I would say sometime in 1922, the early part of 1922. This thing went on for months.  
 10 Sometime in 1922 the 'phone calls came in there and they were for Hunke, for Harry Hunke.

Q. Did you know that yourself or was that gossip?

The Court: Yes.

A. I knew that myself for this reason: I will explain it.

20 Mr. Fallon: Give the reason.

A. When a call came in, whoever answered the 'phone, would call Harry Hunke. He would answer it or they would call him to the 'phone, that is all I know. Not gossip, but facts. These 'phone calls came in for Hunke. During the first month or so, it was indefinite for awhile—anyway he would be called to the 'phone the regular way. Then the 'phone calls came for Hunke and  
 30 he would have a conversation over the 'phone. Then the 'phone calls got to coming regularly, and of course the boys got to kidding among themselves about this "Dame" as they called her.

Q. Who called her a "Dame"? Please name anybody? A. Harry Hunke and one Daniel Flat-tery.

Q. Where did she work? A. I don't know.

Q. Where did you last see him? A. In 1923.

40 Q. You knew their address when he worked for you? A. Yes.

*William H. Kennedy, for Defendants, Cross.*

Q. Do you know this Flattery's address? A. I could find out; I don't know. He is there yet, I know.

Q. Who was another? A. Florence Lelasey.

Q. Where employed? A. I don't know.

Q. The other was who? A. Carl Jensen. 10

Q. The 'phone calls were from the dame? A. From the dame.

Q. Did you ever investigate these 'phone calls from the dame? A. No, not at that time.

Q. So as far as you know, you don't know if it was a woman or not? A. I do not.

Q. Why did you tell us that he was living with a woman? A. These 'phone calls came in there for a while and no thought was given to them by myself or anybody else. I know I paid no attention to it. I thought it was just like every other call and didn't merit any attention on my part. It got to that somebody was calling two or three times a day and always for Hunke. It was a low conversation and the other fellows got to kidding and jobbing about it and there got to be such an uproar in the office that I had to call Harry and ask him what it was all about. He told me that it was the cashier in this lunch room, and I asked him why he had to have his calls at the office, if at all. I said he would have to have it stopped, that we couldn't have that at the office any more. I asked Harry to stay one evening and see if he couldn't put a stop to it. I was so instructed by my superior—that it couldn't go on. Harry told me it was the cashier in the lunch room, two doors below the office, and that he had been going out with this girl. She was getting to be a nuisance. He said he was going to have her stop 20 30 40

*William H. Kennedy, for Defendants, Cross.*

calling, that the boys were getting wise to him. That is the only reason, at that time, that I suspected that he was going out with this girl.

10 Q. Please continue and tell us why you told Mrs. Hunke that Harry was living with that woman—what woman, and what reason you say he had to be living with her. A. That is all that was opened up in the little investigation I made at the time Mrs. Hunke called on me and the second call.

20 Q. Tell us about the investigation and if he was living with this woman, and if so, where? A. I couldn't find anything myself. I didn't attempt to find out by personal observation—by shadowing or trailing him and the woman.

Q. What information did you have that he was living with a woman when you told Lillian Hunke that he was supposed to be living with a woman?

A. I told her only what I had been told and found out by gossip and what the others gave me.

Q. Detective Cash was there? A. Yes.

Q. Do you mean to say that Detective Cash didn't ask any questions about that woman you say he was living with? A. Oh, yes.

30 Q. What information had you that he was living with that woman? A. I had no information except what was reported by others. That was improbable—

40 Q. Give me the information that you gave to him and that you say was improbable. A. I found out that one of the boys, Mr. Slattery, one of the boys working with Harry, seemed close to him, and he apparently guessed the whole situation in this connection. I found out from him that Harry

*William H. Kennedy, for Defendants, Cross.*

had been going out with this cashier for a long, long time, as he expressed it—how long, I don't know. He said a long time, and that she lived with her sister uptown in New York. At that time he told me the sister's address, but I don't know it now. At the time I gave what I believed was the street address of this girl and her sister's apartment, uptown, New York. He made a trip to Connecticut, some town in Connecticut. That is all that I could give to Detective Cash, in any way. 10

Q. This Slattery, whom you don't know where he is located now, gave this statement to you, and yet it wasn't new because Hunke told you himself that he had been out with this girl? A. Yes. 20

Q. The information given by Slattery was not new? A. Not to the essentials.

Q. What do you mean as to essentials? You don't mean to imply that Harry had sexual intercourse with this girl? A. I don't know.

Q. Don't you mean to imply that he was supposed to be living with this woman? A. That is what was told to me.

Q. Didn't you give that information to Mr. Hunke and to Mr. Burke? A. I did. 30

Q. When did you volunteer that information? How long ago? A. Why, Mrs. Hunke, senior, called at the office, 50 Broad Street, probably in the early part of 1923.

Q. She had, however, that fact given to her—you told her, yourself? A. Yes.

Q. You visited at the Hunke, senior's home? A. Yes.

Q. When? A. I would say that it was possibly in the spring of 1923. 40

*William H. Kennedy, for Defendants, Cross.*

Q. You visited them before you came to my office? A. Yes.

Q. And you told me that you had visited them? A. Yes.

Q. You told me they promised to pay you money? A. I did not.

Q. Did they say that? A. No.

Q. What did they say? A. They said Harry would pay.

Q. Did you say that Hunke, senior, had paid? A. I did not.

Q. Was it paid? A. Yes.

Q. When did you pay the company? A. I have.

Q. When? A. I paid in the sum that Harry was supposed to.

Q. Did you receive from either Hunke, senior, or Catherine Hunke, part of the indebtedness? A. No.

Q. Are you being paid for your time here today? A. I am not.

Q. You are with the Doherty Company? A. I am.

Q. Did you tell the Doherty Company that you were going to come here today? A. I did.

Q. So that, Mr. Kennedy, when you say that you told Mrs. Lillian Hunke and Detective Cash about this cashier as being the woman with whom Hunke was supposed to be living with it was a mere concoction in your mind? A. It was not.

Q. It was a fact? A. Hearsay and gossip.

Q. From whom did the gossip come? I give you broad latitude as to from whom this gossip came to you, upon which you base the statement that Hunke was living with a woman. A. I believe I did not make a definite statement that he was living with a woman, other than his wife.

*William H. Kennedy, for Defendants, Cross.*

Q. What do you mean? A. He was supposed to be living with this woman.

Q. From what did you base that statement to Mrs. Hunke?

Mr. Burke: I object. 10

The Witness: I gave it at Mr. Fallon's request.

Q. You mean to say that either one of these men told you that Harry Hunke was living with a woman? A. That is what they told me.

Q. Don't you know that you have not heard one word in this testimony here today and in the conversation with Slattery that he was living with a woman, but that Slattery said he was going out with women? A. As I explained before— 20

Q. Don't you know that there is not one word today in this testimony that Slattery told you that Harry Hunke was living with a woman, but that Slattery said he was going out with this woman? A. I remember distinctly that there was gossip.

Q. Isn't it a fact—didn't you testify here today that the gossip from Slattery was that Harry was running around with this woman? A. Yes, part of it. 30

Q. Isn't it a fact that that was not new to you—that you had already been told by Hunke, himself? A. Yes, sir, I did.

Q. And now you say that you were told that he was living with a woman, other than his wife? A. Yes.

Q. Who? Who told you? A. Harry Hunke. 40

*William H. Kennedy, for Defendants, Re-direct.*

Q. Why didn't you say so before when you testified? A. I wasn't asked.

Q. Didn't you only say before that Harry Hunke was merely going out with this woman?

A. I did not.

10 Q. So your statement now is that Harry Hunke was living with this woman? Answer the question. Is that so? A. That is true?

Q. When did he tell you? A. At the night I asked him to talk over the proposition.

Q. Why didn't you say that before when you were saying that he was merely running around with women? A. I didn't say that.

Q. You didn't say that he was running out?  
20 A. I did.

Q. How long after he made that statement did you continue him in your employ? A. He was there possibly two weeks.

Q. Do you mean to tell this jury, that, being the head of the employees in the position you held, that you kept him in this Brokerage company—a man who was living with another woman?  
A. I didn't keep him.

30 Q. He was kept there as your employee? A. Yes.

*Re-direct Examination by Mr. Burke:*

Q. Did you have the right to discharge him?  
A. Yes.

Q. Did you discharge him? A. No.

Q. Why not? A. He left.

Q. When? A. In about two weeks.

40

Mr. Burke: That is all.

*Edward Hollander, for Defendants, Direct.*

EDWARD HOLLANDER, sworn for the Defendants.

*Direct Examination by Mr. Burke:*

Q. What is your profession? A. I am a lawyer of this State. 10

Q. You practise where? A. Union City.

Q. You are also President of the North Hudson Lawyers' Association? A. I was.

Q. Do you know Harry Hunke? A. I knew him once, yes.

Q. Do you know his wife? A. Yes.

Q. Where did you meet them? A. In the apartment house, number 100, 31st Street, Woodcliff.

Q. Under what circumstances? A. I was Receiver of the Apartment. I had the collection of the rents in charge. I went up there to collect rents that were in arrears. 20

Q. What did you say to Mrs. Hunke and what did she say to you?

Mr. Fallon: I object to that as immaterial and irrelevant.

The Court: Unless it is some matter to which she has testified, it wouldn't be competent. You say you cross examined her on the question of what she said to this gentleman. Of course, you can ask him if she said those things. 30

Mr. Fallon: I still object.

Mr. Burke: This is my case and Mr. Hollander is my witness.

The Witness: I came there, together with Carl Greeley, the man I had in charge of the apartments to collect the rent. I 40

*Edward Hollander, for Defendants, Cross.*

10           went in there the latter part of October, 1922 and asked for the rent. Of course, I didn't know her until then. I was introduced by Carl. She told me her husband had left her and left no money, and that she couldn't pay the rent, and I asked her where he was working and what he was doing. She told me he was in New York, staying in New York. She gave me a telephone address so that I might call him up. I asked her also what was the trouble between them. She told me he was running around with women and gambling. I told her I would try to see him the following

20           week when I was in New York.

          Q. Did she make any charge against the father-in-law and mother-in-law? A. I didn't know at the time who the father-in-law and mother-in-law were.

          Q. Nothing was said about the father-in-law or mother-in-law? A. No.

*Cross Examination by Mr. Fallon:*

30           Q. You were attorney for Edward Hunke and his wife? A. I was not.

          Q. Do you mean to say to this jury that you did not talk to me over the telephone as the Hunke attorney? A. I talked to you but I never represented them.

          Q. You wrote letter to me on his behalf? A. Yes.

40           Q. Gratuitously? A. Yes. I was in another matter. He was a director in the Capital Theatre.

*Edward Hollander, for Defendants, Cross.*

I represented the Capital Theatre, at the time. I had this matter in hand.

Q. The correspondence ran for a period of six months, or thereabouts, between you and Fallon & Fallon? A. I haven't looked it up.

Q. You have it with you? A. Yes.

10

Q. Do you mean that you haven't looked this up? A. I don't know.

Q. Did you not, as attorney for Edward Hunke interview me? A. I did.

Q. Gratuitously or as an attorney? A. Absolutely.

Q. You are not accustomed to doing work gratuitously? A. Sometimes.

Q. As a rule, you don't spend six months of your time gratuitously do you? A. I don't think I saw him over four times. I never represented him.

20

Q. Do you remember writing on October 23rd in reply to a letter of October 23, 1923? A. You have the letters.

Q. Do you remember? A. Yes, I wrote letters.

Q. Do you remember that Fallon & Fallon wrote you on August 28th on the same matter? A. The matter I understand—

30

Q. Haven't you got correspondence about some understanding? A. I have not.

Q. Do you remember Fallon & Fallon writing you on October 6, 1923? A. I do not.

Q. Do you remember our writing you December 13, 1923? A. I don't remember.

Q. Do you remember on February 7, 1924, receiving a letter from me? A. I don't recall the letter; if you say it is there —

40

*Edward Hollander, for Defendants, Cross.*

Q. I show you a letter dated February 7, 1924. Is that your signature? A. No, it is not.

Q. Is that letter from your office? A. That letter is from my office.

10 Q. I show you a letter dated August 24, 1923, and ask you if that is also from your office and your name. A. Yes, that is my name.

Q. It was opened? A. Yes.

Q. I show you another letterhead, with a return, dated September 23rd, and ask you if that is from your office? A. Yes.

Q. Do you mean to say that this letter was written gratuitously, for Edward Hunke? A. Absolutely.

20 Q. What was this matter that you gave your services gratuitously? A. I never represented him. I was in his office in connection with that Capitol Theatre. As one of the directors, he was sued. The Capitol Theatre was turned over. Incidentally, he mentioned this matter. There was no association; I never billed him for what I did. I didn't want any part in this matter.

30 Q. You do recall quite a number of conversations between you and Edward Hunke about the matter? A. Not many, about three times.

Q. You wrote a number of letters? A. Oh, yes.

Q. You remember writing to Fallon & Fallon A. Yes.

Q. You remember talks with Fallon & Fallon? A. I do not; if the letter say I did—I don't remember.

40 Q. You say that Mrs. Lillian Hunke told you her husband was running around with a girl? A. She did.

Q. When? A. Latter part of October, 1922.

*Edward Hollander, for Defendants, Cross.*

Q. You never mentioned that to me or to Fallon & Fallon? A. I never took any trouble in the matter; I never bothered.

Q. You told Mr. Burke about this matter? A. I told him what I did.

Q. Tell us what conversation you had about collecting rents. A. I went with Carl, the young man who managed the house; the other house, of which I was the Receiver. I was introduced to the man in charge of this property. I told him I wanted the rent and wanted it promptly, so when the end of the month came and there was no rent, she told me that her husband was not at home; that he lived in New York; that he left her. I asked her where he was working. I don't remember the name of the firm, but I think it was some brokerage house. She gave me the telephone number, and I called up and made an appointment to meet him in New York. I asked her in the presence of the girl. I asked her what trouble she had, and she said he was running around with women and gambling. 10  
20

Q. Did she appear to be excited? A. There was no reason to be excited. I saw her again in November because the second month's rent became due, and she couldn't pay it. 30

Q. Didn't Mr. Harry Hunke write you, giving up the apartment by the first of November? A. I don't know whether it was the first or not.

Q. Jog your memory. A. If there is some letter I don't remember it. I didn't dispossess her. She was there in December. There was a suit against Mr. Hunke and they couldn't serve him. 40

*Edward Hollander, for Defendants, Cross.*

*Re-direct Examination by Mr. Burke:*

Q. Mr. Hunke and a lot of other men had invested money in the Capitol Theatre stock and you were representing them? A. They were served  
10 by the New Jersey Guaranty Title Company. I was there to represent them.

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SECOND DAY.

---

20 EDWARD HOLLANDER, recalled.

*Cross Examination by Mr. Fallon (continued):*

Q. At the adjournment of court yesterday you were subpoenaed to produce letters that passed between Fallon & Fallon and Edward Hunke, relating to this suit. A. Yes.

30 Q. In reference to your testimony yesterday relating to the visit to Mr. Harry Hunke's, you say for the purpose of paying rent. Can you tell us when that visit was made? A. The latter part of October, 1922 and again in November, and again in December.

Q. You mean you called upon them three times? A. Three times.

Q. On the first visit who was with you? A. I was alone the first time with Carl.

40 Q. Who was the real rent collector. A. The real rent collector was Carl, and manager, too, in the sense of rented apartments—those that were not vacant.

*Edward Hollander, for Defendants, Cross.*

Q. On the second occasion who went with you?

A. I was alone.

Q. And the third occasion? A. The same.

Q. Don't you know that Mrs. Fraser was there at least one time? A. I never saw Mrs. Fraser until here in court, yesterday.

10

Q. When you went there the first time she told you her husband was away and that she had no money? A. Yes.

Q. She gave you information that might indicate his residence or place of business? A. Yes.

Q. You did receive this information? A. I did.

Q. Did you tell her that she need not worry about the payment of the rent as long as her husband had left her? That if you didn't get it from her, you would from the father, because you knew the father very well? A. I did not.

20

Q. Sure? At no time. I didn't know she was related to Edward Hunke.

Q. How long have you known Edward Hunke?

A. I have known him about eight or nine years.

Q. When did you first become acquainted with him—a speaking acquaintance? A. I couldn't tell; it is several years now.

Q. Before this occurrence—before Harry Hunke left his wife? A. Oh, yes.

30

Q. When you went there the second time what did you talk about? A. I told her I had seen her husband in New York. I told her what he had told me. I told her that he told me that she nagged him and that he wouldn't come home; that she made life unbearable for him. I told her, "Why don't you make it more bearable for him and maybe he would—"

40

*Edward Hollander, for Defendants, Cross.*

Q. Did you think there was any truth in the statement about Hunke? A. I did.

Q. Did she tell you he was true or not true?

A. She said she had trouble with him because he was running around with other women; that he  
10 was gambling and staying out nights.

Q. The third occasion? A. I told her I couldn't leave her there; that I was Receiver and had to make reports to the court; that she would have to get out. I told her also that I was trying to serve the husband in a summons in complaint; had started suit.

Q. For what? A. Rent.

Q. Did you want the premises? A. I wanted  
20 the rent.

Q. Wanted the rent? A. Certainly.

Q. You knew, as Receiver, that you could have gotten the premises? A. Yes.

Q. Why did you go looking after the collection of rents, when you had a collector? A. I had a collector, but I had to go there occasionally to check up.

Q. After the first time when she told you her  
30 husband had left and that she had no money, how did you expect to be paid any subsequent money? A. I went there and told her we couldn't keep her there and if she didn't pay the rent, she would have to get out.

Q. She told you her husband was away. Where did you expect to get the rent from? A. I didn't know, as far as—

Q. You say you went from her to her husband and found out about her affairs? A. I didn't dig  
40 into her financial affairs. I wasn't interested.

*Edward Hollander, for Defendants, Cross.*

Q. The husband told you he was not going to return? A. Yes.

Q. And you went back to get the rent, if you—  
A. I did.

Q. When you went there again in November, she again told you she had no money? A. Yes. 10

Q. And you went back again in December?  
A. I told her to get out, but didn't want the trouble of dispossessing.

Q. Did you say that she could stay there as long as she wanted, and if you had to you would get it from the father? A. No; never.

Q. You said yesterday that you were never the attorney of Edward Hunke. A. Never was.

Q. You consulted with the father following receipt of a letter from Fallon & Fallon in relation to this matter? A. Yes, he did mention the letter and showed it to me and asked me for an opinion. 20

Q. As a result of showing you that letter you got into communication with me? A. I did.

Q. By telephone, was it not? A. I remember I wrote you a letter.

Q. Have you in your files a copy of a letter from me on that? A. I have got that. 30

Q. I show you a copy of a letter, after the first visit of Edward Hunke to you. A. I haven't all the letters; I gave a number of them to Mr. Hunke.

Q. When did you turn those letters over to Mr. Hunke? A. At the time I turned all the letters over to him. He is a letter I received from Mr. Fallon.

Q. Have you any letter in your files, dated August 23rd? A. I only have your letter. 40

*Edward Hollander, for Defendants, Cross.*

Q. That letter is dated what? A. August 17, 1923.

Q. Is that letter to you? A. No.

Q. I am asking you for a letter you have, addressed to you from Fallon & Fallon. A. The first  
10 letter I have from you is dated August 23, 1923.

Q. I ask you to produce that letter. Witness produced a letter.)

Q. I offer that letter in evidence.

(Received and marked "Plaintiff's Exhibit Number 7" of this date.)

Q. I show you a letter bearing the date of  
20 August 24, 1923, on your letter head, with a return on it, addressed to Fallon & Fallon and ask if that was sent from your office? A. It was.

Q. In response to a letter just offered in evidence? A. It was.

Q. I offer that.

(Received and marked "Plaintiff's Exhibit Number 8" of this date.)

30 Q. Have you a letter of August 28, 1923, from Fallon & Fallon. A. I have not.

Q. I show you what purports to be a letter addressed to you, and ask you to read it to refresh your recollection. Did you receive such letter?  
A. I believe I did.

Q. I offer that letter in evidence.

(Received and marked "Plaintiff's Exhibit Number 9" of this date.)

40

*Edward Hollander, for Defendants, Cross.*

Q. Have you a letter dated September 6, 1923, from Fallon & Fallon, addressed to you? A. I have not.

Q. I show you what purports to be such letter, and ask you to read it to refresh your recollection, so that you will be able to say if you received such letter. A. I don't recall this letter, exactly. I haven't the original; I have checked up on all letters I have. 10

Q. I ask you if you have a letter dated September 6, 1923, from Fallon & Fallon. A. I have not.

Q. I show you what purports to be a copy of such letter and ask you to refresh your recollection, and ask you if you received such letter. A. I don't recall this letter, at all. 20

Q. I show you a letter dated September 13, 1923, and ask you if that letter was sent by you—received by you from Fallon & Fallon. A. It was, yes.

Q. I offer that in evidence.

(Received and marked "Plaintiff's Exhibit Number 10" of this date.)

Q. Have you a letter dated September 13, 1923, addressed to you by Fallon & Fallon? A. No, I have not. 30

Q. I show you what purports to be a copy of such letter, and ask you to read it to refresh your recollection. Did you receive such letter? A. Yes, I think I got that letter.

Q. I offer it in evidence.

(Received and marked "Plaintiff's Exhibit Number 11" of this date.) 40

*Edward Hollander, for Defendants, Cross.*

Q. Have you a letter of September 11, 1923, from Fallon & Fallon. A. I have not.

Q. I show you what purports to be a copy of a letter and ask you to refresh your recollection, as to whether you received that letter. A. I think I did get this letter.

Q. I offer that letter in evidence.

(Received and marked "Plaintiff's Exhibit Number 12" of this date.)

Q. Have you a letter of September 22, 1923? A. I have. I have that letter, yes.

Q. I offer that in evidence.

20 (Received and marked "Plaintiff's Exhibit Number 13" of this date.)

Q. Have you a letter bearing the date of December 19, 1923, addressed to you by Fallon & Fallon. Did you receive that? A. I have not.

Q. I show you a copy and ask you to read it and refresh your recollection, so that you may say if you ever received such letter. A. I recall this letter.

30 Q. Have you a letter dated January 9, 1924? A. I have not.

Q. I show you a copy of what purports to be such letter and ask you to look at it and see if it refreshes your recollection as to your receiving that letter. A. I believe I did.

Q. I offer it in evidence.

40 (Received and marked "Plaintiff's Exhibit Number 14" of this date.)

*Edward Hollander, for Defendants, Cross.*

Q. Have you a letter of February 6th? I show you a copy of another letter and ask you to look at that to see if it refreshes your recollection?

A. I believe I got this letter.

Q. I offer it in evidence.

10

(Received and marked "Plaintiff's Exhibit Number 15 of this date.)

Q. I show you a letter dated February 7, 1924, on the letter head of Fallon & Fallon, and ask you if that was received by you. A. I did.

Q. I offer that in evidence.

(Received in evidence and marked "Plaintiff's Exhibit Number 16" of this date.) 20

Q. Have you a letter dated February 9, 1924?

A. I have not.

Q. I show you a letter of what purports to be a copy of that letter, and I ask if that refreshes your recollection. A. I have; I remember getting such letter.

Q. I offer it in evidence.

30

(Received and marked "Plaintiff's Exhibit Number 17" of this date.)

Q. In the copy of the letter you read from—in reference to the forwarding of a check to Fallon & Fallon by Edward Hunke, that was drawn to the order of Helen Hunke. Do you recall that?

A. Yes.

Q. I show you a letter of September 9, 1923, and ask you if you recall sending that to the of- 40

*Edward Hollander, for Defendants, Cross.*

rice of Fallon & Fallon, as to the use of the check in the letter? A. I don't recall seeing that at all.

Q. Coming back to this letter of September 6, 1923, you say you don't recall that? A. I will say that I have a memorandum that such a letter  
10 was received by me and sent to Mr. Hunke.

Q. Did you receive these two letters? A. I only have a memorandum of receiving the one.

Q. Take a look and see if they are not so correlated that you can't say that you received the two of them? A. I don't recall receiving two; I only recall receiving one.

Q. Do you recall which one you received? A. Yes, sir, the longer letter.

20 Q. I offer that in evidence.

(Received in evidence and marked "Plaintiff's Exhibit Number 18" of this date.)

Q. Only referring to the longer letter—"P-18"—that is referring to the telephone conversation you had with me this day? A. Yes.

30 Q. That telephone conversation indicated by that letter relates to the payment by Hunke of Three dollars a week? A. I believe it does.

Q. This other letter of September 6, 1923: I ask you to look at it again and see if you now recall receiving that letter after a telephone message that you made to the office of Fallon & Fallon on September sixth? A. I don't know that it was written on that date.

40 Q. Perhaps you will explain this date that you refer to. A. From the diary I keep.

Q. Then you have, in your diary, the date of receipt, of letters from Fallon & Fallon, but not

*Edward Hollander, for Defendants, Cross.*

the letters? A. I haven't the letters because I gave them to Mr. Hunke.

Q. Did you produce here today the diary with reference to these matters? A. No, but I can.

Q. Didn't I ask you to produce all letters between Fallon & Fallon and Hunke? A. I had the letters, but not the daily account of— 10

Q. When did you make the memorandum? A. Yesterday about half past five.

Q. Is there any particular reason for bringing the diary, than going to the trouble of keeping, or rather, bringing the other records? A. It is pretty bulky, but I can bring it to you.

Q. This subpoena calls for letters of particular dates referring to my communication to you. I ask you, when you were trying to find them among your bills—did you make any such inquiry? A. I did, of course, I had them pinned together. I checked off the letters—those I had—and I brought you those, together. 20

Q. Have you any idea of where those letters are, they are missing from your files? A. I told you they went to Mr. Hunke.

Q. Have you a memorandum that you gave them to Mr. Hunke? A. Yes,—9-7-23 received. Your letter received on the next day and sent immediately to Mr. Hunke. 30

Q. This letter of December 20, 1923—you don't remember getting that letter? Take this letter and see if it wouldn't refresh your recollection of having received that letter. Look at the subject-matter of the letter, and tell us whether or not you remember communicating that subject-matter to Edward Hunke? A. I don't recall this letter at all. I have no memorandum, of it, either. 40

*Edward Hollander, for Defendants, Cross.*

10 Q. Don't you remember that you received this letter from Fallon & Fallon about the arrears of Edward Hunke—about the payment of three dollars a week—to be paid on this date—the twelve dollars due from him? A. I remember I received a number of letters from you and the telephonic conversation with him, where Mr. Fallon complained that Mr. Hunke was in arrears. I stated that I would do what I could, but I didn't represent Mr. Hunke. You told me yourself that you were doing this gratuitously.

Q. What? A. You said yourself that it was a nuisance.

20 Q. Does this letter say it was a nuisance? A. No, on the telephone you said you were doing it gratuitously.

Q. Mr. Hollander, you say you have in your files, a diary, containing a list of this correspondence? A. No, I didn't put that away.

Q. You have in your files a diary containing a reference to some correspondence had by you with Fallon & Fallon, relating to the Hunke matter? A. Yes.

30 Q. You have in your diary, now, a letter to you from Edward Hunke, relating to the same matter? A. I have a file. I have a diary in which entries are made from day to day. If I receive a letter I put it down.

Q. Have you also in your file, relating to these matters, correspondence as between Fallon & Fallon and you and Edward Hunke? A. I have a file.

40 Q. Was that correspondence contained in your file envelope? A. Yes, sir, here it is right here.

*Edward Hollander, for Defendants, Cross.*

Q. You produced that file envelope in court? A. Yes, sir.

Q. Did you make inquiry from Edward Hunke as to letters you say were forwarded to him? A. Yes.

Q. When? A. In court this morning. 10

Q. What did he say about the letters? A. He said he did not know how many.

Q. You knew that you were asked to produce those particular letters from Edward Hunke? A. Yes.

Q. The letters were addressed to you? A. I told you I forwarded them to Mr. Hunke.

Q. I asked in our subpoena to you that you produced those letters. You knew that Mr. Hunke had them. Why didn't you produce them? A. I did not give it a thought—I can. 20

(The witness addressing a man in the court room.)

"Mr. Hunke, will you produce those letters?"

Q. I ask you to look at the paper just handed you by Mr. Burke and by Edward Hunke to him— I ask you if those are the letters you refer to? A. Some of the letters, but two of these are to me, addressed to Mr. Hunke. 30

Mr. Fallon: I offer those letters, the Edward Hunke letters in evidence.

(Received in evidence and marked Plaintiff's Exhibit 19 and 20 of this date.)

Q. I also want to offer the original letters of September 17, 1923, and of September 21st, 1923. 40

*Edward Hollander, for Defendants, Cross.*

(Received in evidence and marked Plaintiff's Exhibit 21 and 22 of this date.)

10 Q. Will you kindly look at these letters before they are offered. These letters would indicate your activities in the Hunke case from the period from September, 1922, to May, 1924? A. No they were not.

Q. Exhibit P-7 is addressed from John J. Fallon to you? A. Right.

Q. Exhibit P-17 is addressed from Fallon and Fallon to Edward Hollander under date of May 6, 1924? A. Yes.

20 Q. There was correspondence between those two dates between you and Fallon and Fallon? A. I can't answer categorically because—

The Court: He says he can't answer.

30 Q. Do you mean to say Mr. Hollander that having been shown these letters beginning May 23rd, Tuesday, 1923, and ending May, 1924—the letters being numerous—that you have any difficulty in saying that there was correspondence between those dates? A. No the letter from me was from the early part of—

40 Q. Will you answer the question? A. You wrote me but I did not write you any letters. I was through. The letters came to me and they were sent to Mr. Hunke. The last correspondence you had with me was either in January, 1924, or the first part of February. I know of no more letters; I had nothing more to do with it. I told you over the telephone that it was not a matter that I was interested in but that I did it as a favor.

*Margaret Stone, for Defendants, Direct.*

Q. You did not say any such thing in your letters. A. We had a telephonic conversation.

Q. I show you a letter of February 24th, 1924, from you to Fallon and Fallon. A. Yes.

Q. This letter at least indicates that you had some correspondence with Fallon and Fallon on August 23rd, 1923, and February 7th, 1924, whereby you received letters from Fallon and Fallon or wrote letters to them? A. Right, but none after that. 10

Q. When you received the letter bearing the date of May 6th, 1924, what did you do? A. I turned it over to Mr. Hunke. I didn't answer it.

Q. And you say to this court and jury that all of this service rendered by you to Hunke was done so gratuitously? A. Absolutely and you yourself told me over the telephone that you were working gratuitously, too. 20

Q. There is no doubt as to what you say you did? A. I did.

Q. You realized—you knew, did you not, the position that Mr. Edward Hunke held in the Guttenberg Company? A. I did.

Mr. Fallon: That is all. 30

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MARGARET STONE, sworn for the Defendants.

*Direct Examination by Mr. Burke:*

Q. Mrs. Stone, you are married, are you? A. Yes, sir. 40

Q. Where do you live? A. 254 Grantwood.

*Margaret Stone, for Defendants, Direct.*

Q. Did you live at any time in the same apartment house that Harry Hunke lived in? A. Yes, sir.

Q. In what capacity did you live there? A. Basement.

10 Q. Janitor or superintendent? A. Superintendent.

Q. How long were you superintendent? A. A year and a half.

Q. From what time to what time? A. April, 1921, until about 1923. In April or March I am not sure.

Q. During some of that time did Harry Hunke and his wife live in the same apartment? A. Yes.

20 Q. Where did they live with reference to your rooms? A. Upstairs on the opposite hall where my apartment was—on the other side.

Q. Did you ever hear any discussion between Harry and his wife? A. Not in the beginning.

Q. When did you begin to hear it? A. About four or five months before they went out of there.

Q. What did you hear? A. I heard quite a few arguments and I had many complaints against them from parties in the house.

30

Mr. Fallon: I object.

Mr. Burke: Yes, I consent that that be stricken out.

Q. What were the arguments about? A. From what I could understand they were about his going out with other women.

40

Mr. Fallon: I object.

*Margaret Stone, for Defendants, Direct.*

By the Court:

Q. What she said?

The Witness: That is what I heard.

The Court: That is a matter for the jury. 10

Q. What did you hear? A. I heard them arguing about women and she accused him of not coming home in time because he was out with other women, and he said, "If you would be different to me I would not do such things—I would not—"

Q. How were those arguments? Seldom or often? A. Quite often because I got complaints from the tenants.

20

Mr. Fallon: I ask that that be stricken out.

The Court: Yes, strike it out.

Q. Do you remember any incident of a knife here? A. Yes, sir.

Q. When was that? A. One night it was dark and there was some commotion in the basement. Mr. Earlier came down the basement and he said—

30

Mr. Fallon: I object.

Q. Your attention was called to some trouble? A. To some trouble. Some one had jumped from the window in Mr. Hunke's apartment.

Mr. Fallon: I object to that.

Q. What did you find out? A. Mr. Hunke told me himself that he had jumped from the bedroom window. 40

*Margaret Stone, for Defendants, Direct.*

Mr. Fallon: She says Hunke—

The Court: All right, go ahead.

The Witness: (Continuing) He jumped from the window to save his life he said.

The Court: No, no.

10 The Witness: That was the commotion.

Q. Where did you say you saw him? A. In the basement.

Q. Where was his wife? A. Upstairs.

Q. Was there any quarrel at that time? A. Yes, sir.

Q. Did you hear it? A. Yes.

20 Q. What was it about? A. About the staying out nights and not coming home.

Q. Was there any talk about women? A. Yes, sir, she accused women of going out with him.

Q. In these quarrels did you ever hear Mrs. Harry Hunke say anything in reference to the parents? A. No I did not.

Mr. Fallon: I object to this negative testimony.

The Court: It is all right.

30 Q. Did Mrs. Hunke and you talk about this case—I mean Harry's wife—did she say anything to you about money matters? A. Well she did say several times that her father-in-law was quite wealthy and that he lived in Woodcliff on 34th Street.

40 Q. Did she say anything about getting any money? A. She said if there was any trouble came up she would make them pay.

*Margaret Stone, for Defendants, Cross.**Cross Examination by Mr. Fallon:*

Q. What trouble was she talking about? A. Family affairs between her husband and her and the baby.

Q. She told you these things while you were janitor of the building? A. There is wood in the basement and in the court. She told me these things when she came for her baby carriage. 10

Q. Your apartments were in the front part of the apartment house? A. This side—in the rear

Q. You didn't see him jump from the window? A. No, but the neighbors seen it.

Mr. Burke: I ask that that be stricken out. 20

By the Court:

Q. No. Did you see it?

The Witness: No, I didn't see him jump from the window.

Q. You remember testifying before Mr. William C. Asper? A. Yes, sir. 30

Q. Do you remember this question being asked referring to the window jumping incident?

"You don't know that, do you? A. Yes, I saw it."

The Witness: I never said I saw it.

Q. Do you mean to say that you never said that in that examination? A. I never told it I saw him in the basement. 40

*Margaret Stone, for Defendants, Cross.*

Mr. Fallon: Mr. Burke concedes that the deposition taken on August 21st, 1925, wherein Lillian Hunke was plaintiff against Catherine Hunke, defendant is a correct transcript.

10

Q. You didn't know of that? A. Yes, I saw it.

Q. I show you this same photograph Mrs. Stone, Exhibit P-3, and ask you if that fairly depicts to you the exterior of the house in which you were janitor or superintendent? A. Yes.

Q. I show you a picture Exhibit P-4 and ask you if that fairly depicts the rear of the building? A. That is the first court.

20

Q. The two windows above the court indicate what? A. Bedrooms of Mr. and Mrs. Hunke's apartment.

Q. I show you Exhibit P-5, another picture, and ask you what that picture indicates. Does that indicate the side of the building showing the bathroom, the first window, the kitchen, the second window, the living room next to those windows? A. Yes, sir.

30

Q. I show you a little sketch and ask you if you identify the layout of the building. Just take a look at that and see if you can determine if that sketch fairly indicates the layout of Mr. Harry Hunke's apartment right over the vestibule? A. Yes.

Q. The next is the right entrance hall? A. The right entrance hall.

Q. Does it fairly indicate to you the layout of the vestibule and the entrance hall? A. Yes.

40

Q. Where does the entrance hall lead you as shown by the sketch? A. Into the main hall.

*Margaret Stone, for Defendants, Cross.*

Q. And then over that main hall of the house there are some rooms indicated? A. Yes.

Q. Just tell us if the rooms are fairly indicated to you in the layout of Mr. and Mrs. Harry Hunke's apartment up to the word "bedroom"? A. I can't make this out.

10

Q. Below Mrs. Hunke's bedroom there is a court and the distance of that is eleven feet from the window sill of the bedroom to the court? A. Yes.

Q. Is that the window that you say Hunke told you he jumped out? A. The next one, yes.

Q. It wasn't here? A. No.

Q. The tenants complained to you about him? A. Yes in the morning.

Q. How was he dressed? A. He had a dark suit on.

20

Q. A derby hat? A. No.

Q. What kind of a hat? A. A gray hat.

Q. He told you that he jumped from this window eleven feet from the floor of the court yard and immediately after you saw him dressed with a dark suit and he had a gray hat on and not a derby hat? A. Yes.

Q. There was no disarraignment of his clothing? A. Yes.

30

Q. Was he whistling? A. Yes.

Q. While he had the cigar in his mouth? A. Yes, he had a cigar and I saw him come from the rear toward Park Avenue.

Q. He was not whistling while he had the cigar in his mouth? A. Yes.

Q. Then he told you that he had jumped from the window and come into the basement and he told you that he had jumped from the window and he was occasionally whistling at times? A. Yes.

40

*Margaret Stone, for Defendants, Cross.*

Q. He seemed happy? A. No, make believe.

Q. The Hunkes lived on the ground floor of the building on the opposite side of the house from where you had your apartment? A. Yes.

10 Q. Your rooms were about how many feet to the front from the rear of the building? A. My apartment was half the width of the house.

Q. In the rear half there was a layout for baby carriages? A. No the laundry.

Q. Where were the baby carriages? A. In the front part of the house—the Park Avenue entrance in the basement.

Q. Could you hear very plainly talks between these parties in the basement? A. Yes I could.

20 Q. How could you hear? A. Out in the basement—go out in the evening.

Q. You mean to tell this jury that these people were quarreling much throughout the evening and that you heard it? A. Whenever that was I knew they were quarreling.

Q. You heard this very plainly? A. I was sitting right underneath her living room window and I heard it.

30 Q. Can you tell us what was said? A. He said to her if she would stop nagging at him he would not think of going around with other women.

Q. You testified to quite a considerable length in this previous hearing, didn't you? A. Yes, sir.

Q. You didn't say that at that examination? A. Something about always quarreling.

40 Q. You know that you did not make that statement in your whole line of examination by Mr. Burke or myself at that hearing that if she stopped nagging that he would do better. You didn't say that. A. I don't know. I don't remember. If shown I will recall it.

*Margaret Stone, for Defendants, Cross.*

Q. Don't you know that you did not testify to any such thing at that hearing? A. I don't remember.

Q. Did you, before that hearing, say anything to Mr. Burke or Mr. Hunke? A. Not that I remember.

10

Q. When did you make this statement:

"If she would stop nagging."?

A. Always said that.

Q. When did you make that statement to anybody else other than in this court room? A. I have spoken to Mrs. Hunke about it and Mr. Burke.

Q. You told them that statement? A. Something to that effect.

20

Q. Something to that effect? A. I don't know exactly the words.

Q. You had talked to Attorney Keeley for the Hunkes? A. Yes.

Q. Didn't you say that to him? A. I don't know.

Q. You had talked to someone else? A. Not about this case.

30

Q. Not about this case? A. No.

Q. You had a talk with Mr. Hollander, did you not? A. Not about this case.

Q. What about if not about this case? A. I have never had an interview with Mr. Hollander.

Q. You knew he collected the rents of that apartment? A. Yes.

Q. Did he— A. I never spoke to Mr. Hollander about that.

40

*Margaret Stone, for Defendants, Cross.*

Q. When was it that the Hunkes moved into that apartment? A. The beginning of June I believe, I am not sure.

Q. Do you recall your former testimony that you said it was the latter part of September? A. 10 No. The quarrel started at that time.

Q. Do you recall this question and answer by you in the former testimony?

“Q. Do you know about when the Hunkes moved in—roughly? A. It was the latter part of September I know about four years ago.”

20 Q. Do you remember making that statement in answer to a question by Mr. Burke? A. Moved out. It was in the beginning of the summer.

Q. I ask you if you remember making that answer. A. No.

Q. Don't you remember Mr. Burke asking you if you could roughly say when the Hunkes moved into that apartment? A. I do not.

30 Mr. Fallon: Mr. Burke will you concede that that is correct. It is on page 25 of the deposition.

Q. The question by Mr. Burke was, “Do you know about when the Hunkes moved in, roughly?”

The Witness: It was the latter part of September about four years ago.

40 Q. If you made that statement that it was in September that they moved in you were in error? A. It is so long ago that I can't remember.

*Margaret Stone, for Defendants, Cross.*

Q. You seem to remember these other things pretty well. A. I don't remember all I said there.

Q. And you say that you heard at different times talks between these people because you were sitting outside? A. Yes.

Q. You were sitting outside and you heard these talks at the window? A. Yes, sir. 10

Q. I call your attention to this question and answer on page 26 of the former testimony.

“Q. What was the quarrel about? A. From what I have heard from the dumb waiter and the windows she was always accusing him of being out at night with other women.”

20

Q. Where is the dumb waiter in the building?

A. About five feet from my apartment door.

Q. Towards the rear of the door? A. Yes.

Q. Your apartment is toward the front of the building? A. Yes.

Q. You made a previous statement that you had heard talks through the dumb waiter? A. Yes.

Q. Could you hear through the door? A. It was always open all the time. 30

Q. It is an iron door? A. Yes.

Q. You knew that the requirement was that that door was to be kept closed? A. Yes, sir, but I was told to keep it open.

Q. Always open? A. Yes.

Q. How often did they quarrel? A. Quarreled quite often.

Q. How often? A. Pretty nearly every night in the week.

Q. Is your recollection pretty good on that? A. Sometimes on Sundays, too. 40

*Margaret Stone, for Defendants, Cross.*

Q. What brings that back to your recollection so well? A. Because my husband and I used to laugh about it.

Q. Your husband and you used to laugh about a married couple quarreling? A. Yes.

10 Q. You testified here to-day something about a butcher knife. What have you to say? A. Mr. Hunke said she ran him out with a butcher knife when he came in from work because—

Q. You didn't see that? A. No.

Q. I call your attention to page 26 of this deposition that I have referred to. This is supposed to be your answer:

20 “She ran with a butcher knife one time and he jumped from the window to the court and the woman next door screamed and fainted.”

The Witness: Yes, sir.

Q. Do you know she ran with a butcher knife after her husband? A. I seen it.

30 Q. You didn't see the husband jump from the window, did you? A. Not that I can remember; I was in the basement.

Q. Can you tell this jury as you testified that she ran with a butcher knife and he jumped from the window? A. I said he had told me. I told you at the office.

Q. I am reading to you the examination by Mr. Burke referring to Mr. Hunke. His question and your answer.

40 Mr. Fallon: I will ask that that be entered in the record, that question and answer.

*Margaret Stone, for Defendants, Cross.*

“Q. When you say they quarreled before what did you mean by that—every day or a week? A. Mostly every evening and a lot of it on Sundays. I had a lot of trouble with them. She ran with a butcher knife to the window and he jumped to the court and the woman next door fainted.” 10

Q. You didn't see him jump from the window the time he was chased with the butcher knife? A. No, I never said that.

Q. Do you remember this question being asked by Mr. Burke, “He jumped from the one window that leads to the court?” You didn't say that? A. No. I didn't see him jump from the window. I only know what I was told. 20

Q. Did you realize that you were stating an untruth when you made that answer? A. I never said I seen him.

The Court: She says she did not see that.

Mr. Fallon: Counsel concedes that this is the true transcript.

The Witness: I said what he told me.

Mr. Fallon: I ask that that be stricken out. 30

The Court: The whole thing stands. It is in the record but she says she did not see it.

Q. Do you remember in your former testimony saying that one day Mrs. Hunke told you she was very happy? A. Yes, sir.

Q. You say they were always quarreling. Now, is that statement not true? A. Yes, the mother was there and she treated her very good and— 40

*Margaret Stone, for Defendants, Cross.*

Q. You say she said she was happy and that you heard these quarrels? A. Indeed I did.

Q. Before you became a witness in these proceedings—before Mr. Burke and Mrs. Hunke looked you up you knew Mrs. Catherine Hunke?

10 A. Yes.

Q. You had been away from this apartment house at the time they came to see you for a good while? A. Yes.

Q. When she came to you she explained and told you things? A. No just asked if I knew her son and wife.

Q. I ask you if you recall this question in the deposition—my cross examination.

20

“Q. Whom did you first tell about the mother, Mrs. Hunke, senior? A. Yes, she came and explained and told me things and I said I always heard them arguing but I said it didn’t interfere with me at that time.”

Q. She did tell you things. What did she tell you?

30

The Witness: She asked me—

Mr. Burke: I object.

The Court: I think she can answer that.

Q. What things were explained to you by Mrs. Hunke? What did she tell you?

Mr. Burke: Counsel is not getting what he wants in and—

40

*Margaret Stone, for Defendants, Cross.*

The Witness: She told me she was being sued by her daughter-in-law on account of the husband leaving her.

- Q. Those are the things she told you? A. Yes, sir. 10
- Q. You also said that she explained something to you. What did she explain to you? A. I don't exactly know. She explained the case about being sued for money and that she had not done anything towards those people to sue her.
- Q. You have been to Judge McCauley's office to make a statement? A. Yes.
- Q. You also made a deposition before Mr. Asper? A. Yes. 20
- Q. Do you remember that I sent a summons to you last summer? A. I believe it was; I have forgotten.
- Q. Do you remember going to Judge McCauley's? A. Yes, I do.
- Q. At the time you were up to Judge McCauley's Mr. and Mrs. Hunke, senior, were there? A. Yes, at McCauley's office.
- Q. They brought you to the office? A. Yes.
- Q. It is quite the usual thing to hear quarrels in a house between the various tenants? A. Oh, yes. 30
- Q. So the fact that you may have heard quarrels between Hunke and his wife did not make any impression on you? A. No.
- Q. When did it make an impression on you, was it when Mr. Hunke called and explained? A. No, I explained to her.
- Q. She asked you if you would not help her? 40
- A. She asked me if I could do anything.

*Margaret Stone, for Defendants, Cross.*

Q. What did you do? A. I told her all I knew about it.

Q. You don't remember telling anything to Judge McCauley? A. Yes, I remember telling.

10 Q. Mrs. Hunke was not put out of that house, was she? A. I was told she was.

Q. You were superintendent long after she was there? You were superintendent? A. I had nothing to do with the rents or dispossessing.

Q. Do you remember this question being asked you by me?

"You say she was put out owing three months rent?"

20 A. Yes.

Q. You knew that? A. I knew she was owing rent.

Q. You don't know that she was put out? A. Yes.

Q. Were you listening to Mr. Hollander's testimony? A. Yes.

Q. Did you hear him say she was put out? A. No. ,

30 Q. They intended to put her out? A. She had to move because she could not pay the rent

Q. Did you see her move? A. Yes, sir.

Q. Do you remember when it was that she was put out? A. It was October or the latter part of December. I know it was three months later, after the trouble.

40 Q. You remember the instance when Harry Hunke called up the apartment when his wife was away? You gave him the keys to enter the apart-

*Margaret Stone, for Defendants, Cross.*

ment and get his things out, didn't you? A. I don't remember that, I don't remember whether I gave him the keys or who had it.

Q. You remember he had the keys? A. Yes, I was with him.

Q. He left with a suit case? A. No, a bundle. 10

Q. The father was with him? A. No, sir.

Q. You are sure? A. Yes, sir.

Q. Who—nobody? A. Nobody.

Q. Did you let him into this apartment? A. No, I don't think I did.

Q. Do you know whether you did or not? A. I am not sure—I did not. He had a key of his own—always did have.

Q. Do you remember when that was when he removed his things? A. In the evening. 20

Q. December 1st? A. I don't recall the date.

Q. At the time he took his things away he told you that he had left his wife? A. Yes, sir.

Q. You knew that before, didn't you? A. No, not exactly. I wasn't sure whether it was true or not.

Q. You knew that he had been away from October to that time—you a watchful superintendent that you were? A. Yes, I did. 30

Q. Was that information he gave you a surprise? A. No, it was not.

Q. Didn't you say this at the other hearing,

“When he got his things he told me he left her but I did not know that until he had told me?”

The Witness: I did say that, yes. 40

*Margaret Stone, for Defendants, Re-direct.*

Q. You were mistaken in saything that when you made that statement before, you were mistaken then? You did not know? A. I didn't know before.

10 Q. So that as to the incident that you knew he had left her you knew that before? He had told her that he had left her? A. Yes, for good.

Q. Was it night or dark when this so-called butcher knife episode took place? A. It was dark—between seven and eight o'clock in the evening—possibly earlier than that. I can't say.

Mr. Fallon: That is all.

20 By the Court:

Q. How did you happen to see him on the night that this took place? A. He came to the basement, Judge, and asked me to go upstairs with him. He didn't want to go up in the apartment alone. He was afraid for the police—that they were watching.

Q. You went up? A. Yes, sir.

Q. Was anybody else there? A. No, not a soul.

30 Q. He took the bundle out? A. He took the bundle in the basement. I gave him a paper and cord and he wrapped the bundle up.

*Re-direct Examination by Mr. Burke:*

Q. You went in the apartment? A. Yes.

Q. You saw what he took? A. Yes.

Q. What? A. Some underwear.

40 Q. From the chiffonier? A. From out of the closet and out of there.

Q. This was at half past nine at night? A. Yes.

*Lillian Hunke, Plaintiff, Recalled, Re-direct.*

By Mr. Fallon :

Q. How far is this dumb waiter door that was open from your apartment door? A. I believe it is six or seven feet from my apartment door.

10

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LILLIAN HUNKE, Plaintiff, recalled.

*Re-direct Examination by Mr. Fallon :*

Q. Mrs. Hunk, how much money did you get from Harry in 1926? A. None.

20

Q. How much did you get from Harry in 1925? A. None.

Q. How much did you get from Harry in 1924? A. None.

Q. Now Mrs. Hunke, how many times did you talk with Edward Hunke, Harry's father, in reference to this matter? A. Only once when I met him I believe on the ferryboat.

Q. Was that the only time that you talked to him about the case? A. Yes, sir.

30

Q. Was that, so far as you know, the only conversation that Mr. Hunke had about this case—that was in January, 1924? A. 1923.

Q. Had Harry left you then? A. Yes, sir.

Q. You talked about where he was or something like that? A. I asked him if he knew where he was.

Q. That is all you asked and talked about? A. He walked away from me and I didn't have a chance.

40

*Edward Hunke, for Defts., Recalled, Re-direct.*

Q. Didn't say anything? A. Said he didn't know where he was.

Q. There was another time that you had a conversation with Edward Hunke? Was that on the ferryboat? A. Yes.

10 Q. How much money did you receive in the two envelopes that you had received before? A. Nothing.

Q. How much money did you receive from Edward Hunke in the three dollar weekly payments in all? A. About \$34.

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20

EDWARD HUNKE, one of the Defendants, recalled.

*Re-direct Examination by Mr. Burke:*

Q. You are the father of Harry Hunke? A. Yes.

30 Q. Have you any other children? A. Yes, I have four more.

Q. Four living—how many children did you have? A. Nine.

Q. Four living and five dead? A. Five dead.

Q. You have lived in Hudson County how long? A. Between 28 and 30 years.

Q. Did you ever advise Harry to leave his wife? A. No, sir, I did not.

40 Q. Did you ever entice Harry or endeavor to entice Harry from his wife? A. I did not.

Q. Did you ever suggest to Harry that he leave his wife? A. No.

*Edward Hunke, for Defts., Recalled, Re-cross.*

Q. Did you ever help get a suit case out of his apartment? A. I never was in the apartment from the day that they were together—when he was sick. I never set foot in that apartment since.

Q. Were you not willing that they should live as husband and wife? 10

Mr. Fallon: I object. That is for the jury.

The Court: That is a conclusion.

Q. Did you ever say or do anything with reference to destroying the husband's affections for his wife? A. Never. 20

Q. Did you ever keep Harry in your house over night? A. No, sir.

Q. Did you ever influence him to break away from his wife? A. Any conversation that I might have had with him was in reference to his returning to his wife and child

Q. You always advised him to return to his wife and child? A. Always.

*Re-cross Examination by Mr. Fallon:* 30

Q. Just what do you mean by the statement that you just made that you always told him to return to his wife and child? A. I did not say always I said whenever I had a conversation on that particular matter I always advised him to return to his wife and child.

Q. Did you have any such conversation with him on such a subject? A. At the time he was here in court. 40

*Edward Hunke, for Defts., Recalled, Re-cross.*

Q. You refer to the time that he was being tried—the time he was locked up by his wife? Is that the answer you want to give? A. We always wanted him to go back to his wife and child.

10 Q. So far as you know they got along pretty well together? A. I always thought—I didn't know any different until he left his wife.

Q. There was no complaint made to you that Harry and his wife did not get along together? A. We talked very literal. I didn't know of any quarrels until he came to our house on Columbus Day.

20 Q. You did not bother your head to ascertain whether Harry and his wife were getting along together? A. From all I know they were getting along well.

Q. Do you remember testifying before Mr. Asper that you did not bother your head as to whether they were getting along that you never had time, that you never interfered with them one way or the other? A. I don't remember having said that.

30 Q. You say now that you never bothered your head about their getting along? A. I didn't say I never bothered. I said in that statement that they were getting along well.

Q. You were asked this question by your attorney, Mr. Burke:

40 “When your son Harry married his wife how did they get along at first? A. I don't know, I never bothered whether they were getting along well or not. I never bothered or interfered but from all appearances they seemed to be getting along.”

*Edward Hunke, for Defts., Recalled, Re-cross.*

The Witness: Seemed to be I said but I don't know.

Mr. Burke: That testimony here and the copy of the testimony taken before Supreme Court Commissioner Asper is not the same. The depositions made do not compare in this copy. I want to call the Court's attention to that. 10

Mr. Fallon: If you think there is anything wrong about that—if you think there is anything that you consider wrong in that answer.

The Witness: I should say that I did not make that answer to my recollection.

Q. I want to know if you made that answer. If you do not recall— A. From my recollection as far as I know they got along well. I had no reason to interfere or inquire as to how they were getting along. 20

Q. Here is the question again :

“When your son Harry married his wife how do they get along? Do you know? A. I don't know. I never bothered whether they were getting along well or not. I never had time—I never interfered one way or the other. From all appearances they seemed to be getting along.” 30

The Witness: Seemed as I remember is right.

A. Where I said I didn't care—

Mr. Fallon: Will you concede that this is a true— 40

Mr. Burke: I will not.

*Edward Hunke, for Defts., Recalled, Re cross.*

Q. You know, Mr. Hunke, that you and your wife did not like Lillian Hunke before she was married to your son? A. No, no objection.

10 Q. Didn't you testify in this proceeding that I am referring to now that you and your wife talked the matter over and that she said she was sure they would never get along because they were scrapping before they were married? A. I don't remember.

Q. Did your wife ever say anything in your presence that your son Harry and Lillian Fraser—that she didn't think they would get along because they were scrapping before they were married? A. I don't remember anything like that.

20 Q. Do you remember this question by Mr. Fallon on cross examination in the proceeding before Mr. Asper that I have heretofore referred to:

“Q. Don't you know that your wife frequently complained of a match being made by your daughter-in-law?” and so forth?

30 A. I don't know what she said. I had no objection to the marriage.

Q. You heard your wife complain about this from time to time and she said if they liked one another they would not be scrapping and fighting before they are married and that she thought they would not be able to get along? Do you remember that? A. Maybe I did.

Q. That talk was had previous to the marriage? A. Yes.

40 Q. She said if they liked one another they could get along but because they were scrapping before

*Edward Hunke, for Defts., Recalled, Re-cross.*

they were married she thought they would never get along. Isn't that the answer she made in reference to the prospective to be made? A. I don't know when that statement was made, I don't know if that was before or after.

Q. You were at your home the night of October 21, 1922, when your son Harry came there and told you and your wife that he had left his wife? A. I was home. 10

Q. You heard him say that? A. I think I did.

Q. Don't you know that you made an affidavit in this court under the date of June 12th to that effect? Doesn't that refresh your recollection any? Do you remember that he did say that or not in coming to your home after he had left his wife? A. He was talking to my wife. 20

Q. You heard that? A. As much as I remember he said that he had gone away from his wife.

Q. What did you do if anything about this notice of his not returning to his wife?

Mr. Burke: I object.

The Court: I think he may answer that He is entitled to that.

The Witness: I didn't talk much because he was talking with my wife. Why should I know what my wife was saying to him? 30

Q. Never mind that. So that you did nothing, did you? A. I don't know what she did.

Q. You don't know? A. I don't remember whether I said to go to his wife. I don't remember.

Q. About what time of the night on October 21st was it when he came to your home? A. I don't remember. 40

*Edward Hunke, for Defts., Recalled, Re-cross.*

Q. You were satisfied from your observation that your son Harry and his wife were getting along all right? A. Until Columbus Day, 1922, when he came over to our house I think he told of the trouble in our house.

10

Mr. Burke: He and she?

Mr. Fallon: I ask that Mr. Burke's interpretation be stricken from the record.

Q. Mr. Burke is the attorney in this case and also your attorney in the bank? A. Yes.

20

Q. In these differences that you have had—in the proceedings of the various natures with them between you and your daughter-in-law Lillian you have had numerous attorneys, have you not?

Mr. Burke: I object.

The Court: Yes, I think you are going too far.

Mr. Fallon: I withdraw it.

Q. You had Mr. Edward Hollander's advice in connection with this matter?

30

Mr. Burke: I object.

Mr. Fallon: This is for the purpose of showing Hollander—

The Court: You can't on cross examination. I am not going to allow you to cross examine on the foregoing case. That is not a collateral note. Confine yourself to the direct issue.

40

Q. What position do you hold with the Guttenberg Bank? A. Secretary-Treasurer.

*Edward Hunke, for Defts., Recalled, Re-cross.*

Q. Are you a director of the bank also? A. No.

Q. You were a director? A. At one time.

Q. When did you cease to be a director? A. I don't remember offhand—several years ago.

Q. After this suit was started? A. Around 10 that time.

Q. Don't you know the time that you are examined on supplementary proceedings that you were a director—

Mr. Burke: I object.

The Court: I don't know that that makes any difference.

Mr. Fallon: On his financial ability. 20

Q. At the time that this suit was started you were the owner of some of the stock of the Gutenberg National Bank?

Mr. Burke: I object to that, we have nothing to do with liability under the law.

The Court: I think you started that yourself but we can't have that in this cross examination. 30

Mr. Fallon: That is all.

*Catherine Hunke, for Defendants, Direct.*

CATHERINE HUNKE, one of the Defendants,  
sworn.

*Direct Examination by Mr. Burke:*

10 Q. You are the mother of Harry Hunke? A.  
Yes.

Q. How old are you? A. I am 57 years old.

Q. Did you at any time ever advise Harry to  
leave his wife? A. No.

Q. Did you do anything to entice Harry away  
from his wife? A. No.

Mr. Fallon: I object to that as calling  
for a conclusion.

20 The Court: What she said is competent.

Mr. Fallon: It is alleged in the com-  
plaint.

The Court: All right, categorically.

Q. Did you ever suggest to Harry that he  
should not live with his wife?

Mr. Fallon: I object to that as not call-  
ing for a conclusion.

30 The Court: I think she may answer that  
question.

The Witness: No.

Mr. Burke: I would like to renew my  
object to your Honor's refusal of my non-  
suit.

I would like to offer in evidence Mr.  
Fallon's letters to me dated January 6th,  
1923.

40 Mr. Fallon: What is the object of that?  
That is correspondence between attorneys  
and I have a right to object to it and I  
do object.

*William H. Kennedy, Recalled, for Defendants,  
Re-direct.*

WILLIAM H. KENNEDY, recalled for the Defendants.

*Re-direct Examination by Mr. Burke:*

Q. You were asked a great many questions yesterday by Mr. Fallon about the statement you made that it was supposed that Harry was living with another woman. Is there anything that comes to your mind—anything that Harry said to you about that? 10

Mr. Fallon: I object to that.

The Witness: Nothing new comes to my mind except, as I said yesterday, what Harry told me himself. 20

Mr. Fallon: I object to this repetition.

Mr. Burke: If there is something new Mr. Kennedy—did Henry say anything to you about his situation at home with reference to any other woman?

A. Oh, yes, he talked to great length about that when I was talking with him. 30

Q. What did he say? A. In order to tell that I will have to tell the reason for talking the matter over with him.

Mr. Fallon: I object to that—to going over that again.

The Witness: It is additional to what I said yesterday.

Mr. Fallon: I object to that on the 40

*William H. Kennedy, Recalled, for Defendants,  
Re-cross.*

ground it is immaterial and irrelevant and not proper re-direct.

10           The Witness: Harry told me that he was leaving his wife, that he had left his wife and was living with this other woman. It became necessary for me to find out the circumstances because of a position that was open. We contemplated putting him in but the circumstances surrounding Harry at that time—the conditions—made it necessary for us to refuse to give him the position. It was after he had told me this  
20           that I suggested to my superiors not to give him the position because he was not a fit man for it.

Q. Is that all that you recollect of what he said? A. No.

Q. What did he say? A. He told me he was living with this woman. He told me why he was living with her. This was during that conversation.

30           Mr. Burke: That is all.

*Re-cross Examination by Mr. Fallon:*

Q. And yet, this man who had told you that he was living with another woman, you continued in the employ of the brokerage company for a number of weeks thereafter? A. This man—

Q. Yes or no. A. For about two weeks.

40           Q. This brokerage business of Jones and Baker

*William H. Kennedy, Recalled, for Defendants,  
Re-cross.*

—it was what is known as a bucket shop? A.  
It was not.

Q. It is not in business now? A. No.

Q. For some years before? A. Not since May  
31st, 1923. 10

Q. Is it a stock brokerage concern? A. It was.

Q. Where men only of the highest rectitude  
are employed? A. Yes, very.

Q. And yet this man was admitting to you  
his infidelity to his wife—that he was living with  
another woman and yet you continued him— A.  
Two weeks.

Q. Why didn't you discharge him at once? A.  
The proceedings were going through. 20

Q. You told Mr. Burke that you had the power  
of discharging? A. I didn't want—

Q. You want this jury to believe that a mere  
clerk was dealing with stock brokerage matters?  
A. No.

Q. He was a clerk dealing in brokerage mat-  
ters? A. Yes.

Q. You were an auditor? A. I was.

Q. What was his position? A. Bookkeeper. 30

Q. You were not keeping men who admitted  
these associations with other women. He was  
working on books and he might falsify? A. No  
danger.

Q. You had how many bookkeepers? A. 22.

Q. You don't remember of any bookkeeper do-  
ing harm? A. There is always a possibility of do-  
ing harm.

Q. Can you tell us when it was that you went  
over to the home of Hunke, senior—about what 40  
time? A. Not exactly.

*William H. Kennedy, Recalled, for Defendants,  
Re-cross.*

Q. How long after Mrs. Lillian Hunke had called to see you in your place of business? A. My recollection is that I called on Mr. Hunke, senior, prior to Mrs. Lillian Hunke's visit to me.

10 Q. She was over to your place of business? A. Oh, Broad Street you mean?

Q. She was at the brokerage place of business? A. Yes.

Q. How long after the visit of Lillian Hunke to you on Broad Street was it that you visited the home of Hunke, senior? A. I can't recall exactly—possibly three or four months.

20 Q. What was the purpose of the visit? A. I wanted to find out from Harry's parents if they knew where he was.

Q. Without previously investigating for Mrs. Lillian Hunke? A. Positively not.

Q. Didn't you say in your testimony that Mrs. Lillian Hunke had called there to see you? A. It was the latter part of 1922 or the first of 1923.

Q. After the first visit to you you investigated to ascertain his whereabouts? A. Not his whereabouts.

30 Q. Not his whereabouts? A. No the girl was supposed to be living—

Q. When Mrs. Hunke visited you to speak to you alone Harry was not in your employ? A. No.

Q. He didn't give any intimation that he was living anywhere? A. He left on a Friday night.

Q. You didn't know where he was going to live? A. No, not—

40 Q. You told his wife that he had left without any notice? A. Correct.

*William H. Kennedy, Recalled, for Defendants,  
Re-cross.*

Q. Wasn't the purpose of your visit to the home of the Hunke seniors to ask if they would not pay Harry's— A. No.

Q. You are sure of that? A. Sure.

Q. Do you recall what conversation you had with the Hunke seniors? A. Yes. 10

Q. Tell us. A. I called on Mr. and Mrs. Hunke senior with the idea of finding out where Harry was, thinking that they knew where he was. My idea, briefly, was because he owed me three hundred fifty dollars. They told me they did not know where he was but that if I located him that I was to get in touch with them but that they had no doubt that he would pay what he owed me. 20

Q. Isn't it a fact that Mr. Edward Hunke knew where the son was? Didn't they say so? Isn't it a fact that you inquired there to find out as to his whereabouts? A. Both.

Q. Did you at the time you were in the home of the Hunke seniors ask if they would pay Harry's debts? A. I didn't ask if they would pay them. I told them I needed this money and that I could ill afford to lose it. I left the situation entirely up to them which they declined. 30

Q. Was it after your call at the Hunke house that Catherine called to see you? A. That I am not sure of.

Q. Jog your mind. A. Those dates are so dim; it was so long ago.

Q. I am speaking about the time subsequent to — A. About that visit I don't recall whether it was before or after—around that time some time.

Q. Why can't you think of whether the visit of Catherine Hunke was before or subsequent to 40

*William H. Kennedy, Recalled, for Defendants,  
Re-cross.*

your visit of the Hunke home in New Jersey? A. If there was something pertaining to that called to my memory I would be glad to tell. It was some time—it might have been before, just before  
10 or just after.

Q. Do you remember just what Mrs. Hunke said to you when she came to your place of business to see you? A. No, I do not. If I can have something that would call it to my memory—

Q. So you want this court and jury to believe that Mrs. Catherine Hunke called at your place of business but that you do not recall when that visit was? A. I do not recall when the day was.

20 Q. Do you recall the conversation? A. Not verbatim. I kept no record of what was said. She talked to me lots of times some of which was immaterial and I can't remember.

Q. Do you remember any part of the conversation had between you and Catherine Hunke on your visit to them in New Jersey? A. Yes, I remember parts.

Q. You did not remember it a minute ago. A. Yes.

30 Q. Tell us the parts of the conversation between Catherine Hunke and you? A. As I recall I believe she called there with her sister. I am not sure about that.

Q. Didn't she introduce this woman as her sister Minnie? A. I believe she introduced the sister.

40 Q. The sister Minnie? A. I don't recall; I was not interested. She called there to see me about Harry. Naturally to find out things as she expressed it of what Harry had been doing. It was

*William H. Kennedy, Recalled, for Defendants,  
Re-cross.*

distasteful to me to have anything to do with it. I was disgusted with the affair. I couldn't tell her anything except what I had told Detective Cash and Lillian Hunke. I practically told the whole story over again as I knew it. 10

Q. Did you tell Catherine Hunke that he had admitted to you that he was going out with other women? A. Yes.

Q. Did you tell Catherine Hunke that he was living with another woman other than his wife? A. Yes.

Q. You don't know if that was before or after the visit to their home in New Jersey? A. I wouldn't say positively. It is my belief that it was prior to their calling up. I am not sure. 20

Q. Was this prior to the visit of the sister Florence to you? A. I am inclined to believe it was.

Q. Have you since yesterday tried to locate Mr. Slattery or his whereabouts? A. I have not.

Mr. Fallon: That is all.

By the Court: 30

Q. Can you tell us when this confession was made to you by young Hunke? A. I should say it was around the first part of January, 1923, during the first half of the month.

Q. Did I understand you to say that when the wife called on you the second time that you told her that he was living with some other woman? A. I don't recall telling about living with another woman—that is rather a difficult subject to talk about with a man's wife. I didn't tell her that. 40

*William H. Kennedy, Recalled, for Defendants,  
Re-cross.*

Q. Who is the first to whom you told anything about another woman? A. To the best of my belief Harry Hunke's mother.

Q. After the first of January? A. Yes.

10 Q. What did you say to the wife about the husband and some other woman the second time she called? A. The first time his wife called she tried to find out from me if I knew where Harry was.

Q. Did you say anything about another woman on these occasions? A. I told her the first time that it was my belief that Harry was going around with another girl. I didn't tell her I knew at that time that he was living with this other woman or having intercourse with her.

20 Q. And the second time. A. As testified yesterday I had found out the address of this woman and this I conveyed to her.

Q. On either occasion did you tell her that he was living with another woman? A. I did not.

Q. When did he leave your employ? A. I can tell you that it was about two weeks later. I would say around the 25th of January—the latter part of January—on a Friday night.

30 Q. Did you know where he was during that time? A. He always told me in the office that he was living in a furnished room in New York.

Q. After he left your employ you didn't know what became of him? A. Never heard of him.

*Re-cross Examination by Mr. Fallon:*

40 Q. You stated yesterday and you state again today that Harry Hunke remained only two weeks after the alleged confession about this other woman? A. About two weeks.

*William H. Kennedy, Recalled, for Defendants,  
Re-cross.*

Q. I understood you to say that you told Lillian Hunke it was the latter part of December that you told about these visits with women? A. I believe my testimony was the latter part of December or the first of January. 10

Q. He continued in your employ until the 25th? A. Approximately.

Q. Approximately four weeks? A. Not necessarily.

Q. If it was the latter part of December or the first of January that you had this talk with Mrs. Lillian Hunke the time in between that would be more than two weeks, would it not? A. I said approximately two weeks. 20

Q. You have said in answer to questions that you never said anything to Mrs. Hunke about his living with another woman. Didn't you tell the court and jury in answer to Mr. Burke's question about this woman that he was supposed to be living with? A. No, Harry going with.

Q. Supposed to be living with, didn't you say? A. Possibly I did.

Q. Your statement to-day is the same as yesterday? A. Both yesterday and to-day. 30

Q. Your statement to-day or yesterday? A. Both yesterday and to-day.

Q. You told the court that you never told about his living with another woman? A. I told him I didn't tell that he was living with another woman.

Q. But you did say yesterday to the court that you had told Mrs. Lillian Hunke that he was living with another woman. A. Possibly I did in a general way. 40

*William H. Kennedy, Recalled, for Defendants,  
Re-cross.*

Q. You are not blackening this man's character to his wife? A. No.

Q. You should remember pretty well the complete story that you told to his wife? A. I do,  
10 very much. I told that he was living with another woman at the time.

Q. Do you remember that you kept saying and that I kept objecting to your testifying about his living with another woman and then your statement to the court that you had made a statement to Mrs. Hunke and said that there was a rumor that he was living with another woman, and that you persisted in saying that you had said to Mrs.  
20 Lillian Hunke in the talk that you had with her that her husband was not running around with other women but was supposed to be living with another woman? Didn't you say that? A. I don't recall that I did.

Q. If you did was that true or not true?

Mr. Burke: I submit that this should not be permitted.

The Court: No I don't think that that  
30 testimony is proper under the circumstances. That is a question for the jury to say.

Q. Do you recall whether you said that yesterday? A. My testimony—if I said that yesterday it is true.

Q. You mean if you said yesterday in answer to Mr. Burke's question that you said to Mrs.  
40 Lillian Hunke that her husband was supposed to be living with another woman that that statement

*William H. Kennedy, Recalled, for Defendants,  
Re-cross.*

you made to her was true? A. If the testimony disclosed any such thing that is true.

Q. Do you recall Judge Cutler asking you whether you said anything to Mrs. Hunke about that in this case? A. All of my testimony has been to the best of my knowledge. 10

Q. And to the best of your knowledge and belief did you answer that correctly? A. I am not positive if I told her in so many words or if I did not. The general conversation was along those lines.

By the Court:

Q. In the time spent yesterday where you said you heard of his living with another woman—you eventually stated that he told you that himself? A. Yes, sir, that is right. 20

Q. Did you hear that before that time from anybody else? A. That was gossip.

Q. From whom did you hear the gossip? A. From the bookkeepers working with Harry Hunke.

Q. And they told you? A. Yes, Slattery and one by the name of Jensen. 30

Q. When did they tell you that? A. Possibly the latter part of december.

*Re-cross Examination by Mr. Fallon (continued):*

Q. One man was mentioned yesterday. Was there a woman? A. Deleseey.

Q. She did not tell you that? A. No.

Q. Why didn't you mention that? A. You asked me the name of the four who answered the phone. 40

*Frank A. Gillen, for Defendants, Direct.*

FRANK A. GILLEN, sworn for the Defendants.

*Direct Examination by Mr. Burke:*

10 Q. Where are you employed? A. J. W. Greene, Incorporated.

Q. A furniture house? A. Yes, on Grove Street.

Q. Have you a record of the purchase of furniture by Harry Hunke in the year 1919? A. Yes, sir.

Q. And what are your duties in connection with that? A. Credit Sales Manager.

Q. Do you supervise the records? A. Yes.

20 Q. What is the record you hold in your hands? A. The record of the ledger account showing the debits and credits—the purchases and payments.

Q. Is there an entry in the year 1919? A. Several.

Q. What is the entry?

Mr. Fallon: I object; it is not shown because he has testified—

Mr. Burke: He has.

30 Q. Did you make these entries upon this sheet? A. No, sir.

Q. By whom were they made? A. The bookkeepers after I had authorized them.

Q. Do you know who the bookkeepers were? A. No, I couldn't mention that, we have so many.

Q. The items transcribed on this sheet were made on some other sheet? A. Yes.

Q. Do you know the name of— A. No.

40 Q. You know then or you believe that some furniture was sold by some salesman in your shop—through a salesman? You don't know as to the

*Frank A. Gillen, for Defendants, Direct.*

notes of the sales transacted on this paper by someone else? You don't know? A. They are charges.

Mr. Fallon: I object.

The Court: Is this the original entry? 10

The Witness: No, sir, the debit is the original item.

Q. Where is there anything on these records to show where the sales were made to? A. After the account was opened to Harry Hunke. These are all the debits.

Q. What is the purpose of this Mr. Burke?

Mr. Burke: I want to show that Mrs. Hunke said that this furniture was bought by some money she had before she was married. 20

The Court: Not all.

Mr. Burke: We say that this furniture was not bought that way but that it was bought on time. She said with cash. We want to prove that it was bought on time. We will show by this charge account and prove that less than ninety two dollars was paid that way. We will show that a hundred dollars credit was given by Hunke senior and will find the man who made the charge on the right card. 30

The Court: This was not done by him or known to him personally. I don't think you can use a memorandum of the ledger account.

Mr. Burke: He does know about it. 40

The Court: Personally?

*Frank A. Gillen, for Defendants, Direct.*

Q. Do you know whether an account was opened? A. Yes, sir.

Q. Was that a charge or cash account? A. Charge—deferred payment.

10 Q. Do you know whether any of that charge account was charged off?

Mr. Fallon: I object to that as immaterial and irrelevant.

The Court: Not immaterial.

Mr. Fallon: Exception.

Q. How long did that account run?

20 Mr. Fallon: I object to that because that was done by somebody else. Except to the entries it is not—

Q. What disposition was— A. After the sales account is open it is for the cashier to place the credits on the account.

Q. What did you do with the sheets? A. They are only to be referred to for the different credits.

30 Q. In whose charge are the sheets? A. In the office.

Q. For direct charges? A. Direct charge.

Q. This is the only account you have? A. The only one with Harry Hunke.

Q. There is no other book or account? A. No.

Q. This account is between Harry Hunke and Greene and Company? A. J. W. Greene and Company.

40

*Frank A. Gillen, for Defendants, Direct.*

By the Court:

Q. If a person comes in and pays cash there is no account? A. Yes, there is no occasion then to pass upon that.

Q. You don't know anything about that? A. 10  
No.

Q. You know only of the charge account? A.  
Yes.

Q. Besides showing when a charge account is charged—

Mr. Fallon: I object to all the examination on these sheets.

The Court: If he knows himself. 20

Q. The date on that card is when? A. July 15.

Mr. Fallon: Not from the card.

The Court: Not if he knows when it was done.

Q. What year? A. 1919.

The Court: You can't look at that; that is immaterial. 30

Mr. Burke: You won't permit—

The Court: No.

Mr. Burke: Exception.

The Court: You can mark them for identification, but I will rule them out of evidence. If the case goes up I won't care to see the papers.

(Received and marked D-1 and D-2 for 40  
identification of this date.)

*Frank A. Gillen, for Defendants, Direct.*

Q. Is there anybody in the employ of Greene except you who has charge of these records? A. Yes.

Q. What is that name? A. Mr. Dwyer—John D.

10 Q. What are Dwyer's duties?

Mr. Fallon: I object.

The Witness: I myself and the man who passes on the credit, okaying the slips for delivery.

Q. Who is responsible for the correctness or non-correctness of these sheets?

20 Mr. Fallon: I object to that as calling for a conclusion and as immaterial.

The Witness: There is no particular responsibility for the accuracy of the book-keeper.

Q. Suppose some question came up about Hunke's account. Who is the man in authority there over this account?

30 Mr. Fallon: I object to that as a supposition.

The Court: I am going to allow him to answer the question.

The Witness: I am.

The Court: Whose handwriting is that on the left?

The Witness: That is the writing of the man who changes the addresses in the of  
40 fice.

*Frank A. Gillen, for Defendants, Direct.*

The Court: Who wrote it?

The Witness: I couldn't say. I think Mr. Caldwell signed that. It is generally done by the clerks.

The Court: Underneath the word "Harry Hunke" in black ink is written a memorandum. Who wrote that? 10

The Witness: Mr. Garber of the Collection Department. He takes care of the collections. He sends them out after they have been passed as to credits and sales.

The Court: That has nothing to do with the account?

The Witness: It has a bearing on it, yes, sir. There are conditions of an account as to the wisdom of continuing it. 20

The Court: Right above the word "credit" and "balance"—is that another item? Who wrote that?

The Witness: Mr. Garber of the Collection Department.

Q. When? A. About December 5th, 1922, it would appear to be. 30

By the Court:

Q. Who wrote the figures 299998 in red ink?

A. One of our bookkeepers—one of our girls.

Q. And the figures 1998. A. That is the general folio page—1998 is the card—\$38. merchandise credit.

Q. What do you know about the card? A. Nothing more than that the \$38 was returned; that he is entitled to a credit. 40

*Frank A. Gillen, for Defendants, Direct.*

The Court: I refuse it. That does not show in that account what was purchased. It is simply merchandise.

The Witness: The amount of the charge is here.

10

By the Court:

Q. It does not show what it was? A. No, not the individual item.

By Mr. Burke:

Q. Is there anything to show that a dining room suite was purchased? A. No, sir.

20 Q. Is there anything in your office to show that? A. No.

Q. But a dining room suite was ordered? A. Yes.

Q. Who has charge of that?

Mr. Fallon: I object to that.

The Court: If he has any other memorandum he must produce it.

30

Q. Are these all the records you have? A. We have to go into the vaults.

Q. All I want are the purchases made in 1919.

The Court: That is another matter. If you have the original entry but a mere ledger account is not going in alone.

40 Mr. Fallon: This is a credit account. The testimony shows it was cash. I should say that that is a matter for the jury to decide.

*Lillian Hunke, Plaintiff, Recalled, Re-direct.*

Q. Will you produce that record at two o'clock?

A. The 1919 one?

Q. Yes, the 1919. A. Anything further?

Q. Every scrap of paper you can bring in affecting this account in 1919.

10

The Court: You had better bring this ledger back.

Mr. Burke: Yes, including that.

The Court: Yes, but we will not go into that now.

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LILLIAN HUNKE, Plaintiff, recalled.

20

*Re-direct Examination by Mr. Fallon:*

Q. Mrs. Hunke, on either of the occasions that you visited the office of Jones and Baker in New York and talked with Mr. Kennedy was anything said to you about your husband living with another woman or supposed to be living with another woman? A. Never.

30

Q. Did you ever hear that statement mentioned except in court by Mr. Kennedy in this trial? A. Never heard it before.

Q. Mr. Hollander says that when he talked to you about the rent that you talked to him about your husband's gambling and running around with women. Was there any such conversation? A. I never knew the man.

Q. Did you ever say such a thing? A. No.

40

Q. What did Hollander say about continuing in possession of the apartment? A. My mother

*Lillian Hunke, Plaintiff, Recalled, Re-direct.*

opened the door. I was in the kitchen with the baby.

Q. He says the mother was not there. A. She was.

10 Q. What did he say? A. He asked for the rent. I told him that I didn't have a husband living at home. He says, "Where can I get in touch with him?" I said, "Jones and Baker," and gave him the telephone number. I said, "You can call there." He said, "I can get it all right." I said, "Do you know the Hunkes?" He said he knew the father.

Q. Did he call back thereafter? A. No.

20 Q. He says he was there three times. A. No he was not there three times. He was only there once for the rent.

Q. The only time was when your mother opened the door for him? A. Yes, sir.

Q. Mrs. Margaret Stone says that you told her that you were very happy at one time because of some promise made by the elder Hunke about financial matters. Did you ever have such a talk? A. Never.

30 Q. Did you ever have a talk with Mrs. Stone at any time? A. Never.

Q. When you called to see Mr. Kennedy at the office of Jones and Baker was your husband then away or was he there? Do you remember that?

A. I don't remember that.

Q. Mr. Kennedy says that on one of the occasions when you called he said that you had to call Harry down. Did he make such a statement? A. He said he—

40 Q. Did he say that he had to call Harry down?

A. No, sir, he never mentioned that.

*Lillian Hunke, Plaintiff, Recalled, Re-cross.*

Q. Did you believe, as a result of what was said to you by Kennedy that your husband was running around with another woman? A. No, sir.

Q. Did you tell Mrs. Stone or anybody else that he was running around? A. No. 10

Q. Did you know at any time that your husband was running around with another woman? A. No.

Q. Mr. Kennedy says that in a conversation he had with you at a time when your sister Florence was present or Detective Cash was present that he said to you—that he mentioned to you about this woman—that your husband was supposed to be living with another woman. Did he ever make such a statement to you? A. No, sir. 20

Q. Kennedy testified that when you called at his office with Detective Cash that he felt that he would have to call Harry down. Did he say that while Cash was with you? A. No, sir.

Q. Did you tell anybody at any time that your husband was a gambler? A. No.

Q. To your knowledge was your husband a gambler? Did you ever have knowledge of such? A. No. 30

*Re-cross Examination by Mr. Burke:*

Q. If Mr. Hollander says that he visited you three times Mr. Hollander is not telling the truth? A. Absolutely not.

Q. He lied? A. Must be.

Q. If Mr. Kennedy says that he talked to you about Harry's financial condition, did he— A. 40  
He said he loaned him money.

*Lillian Hunke, Plaintiff, Recalled, Re-cross.*

Q. Then you knew something about Harry's financial condition? A. Not until I went over to the office.

Q. If Mr. Kennedy says that he said to you that Harry was running around with other women that is true? A. No, nothing was told me.

Q. What Mr. Kennedy says is not true? A. No.

The Court: That is not a proper question.

Mr. Burke: Withdraw it.

Q. Did Mr. Kennedy say to you that Harry was supposed to be running around with another woman? A. He said that he was running around with some other girl, but that he didn't know who, but he had tried to find out if there was any truth in the matter.

Q. Isn't it a fact that he talked to you about his financial difficulty? A. I said yes he did.

Q. This janitress, Mrs. Stone—did you have a talk with her? A. Never. I said, "How do you do" and passed the time of day when I went down for the gocart.

Q. You never talked to her about your situation and Harry's? A. Never.

Q. Do you say now that you have no information that Harry was running with another woman? A. No.

Q. You still say so? A. Yes.

Mr. Burke: That is all.

*Re-direct Examination by Mr. Fallon:*

Q. Did you chase your husband with a carving knife at any time when you lived at this apartment house where Mrs. Stone was superintendent? A. No.

Q. Did you have, in your apartment house, a carving knife? A. The truth to say is that I 10 never owned a carving knife.

Q. Was there any occasion during your married life when Harry jumped out of a window? A. He never jumped out of a window.

Q. Did you ever while living in the apartment of which Mrs. Stone was janitress quarrel with your husband and cry and shriek about your husband going out with women? A. No.

Q. Before the time that he moved on October 20 23rd, you and your husband got along pretty well? A. Yes, sir.

Q. There was no break prior to that—no open breach? A. Nothing at all.

The Court: You are talking about a carving knife.

By Mr. Fallon:

30

Q. Mrs. Stone said you chased your husband out of the house with a butcher knife and that he jumped out of a window. A. Never did anything like that.

Q. Did you have a butcher knife in your kitchen equipment in your home? A. Never.

Mr. Fallon: That is all.

40

*Mary Fraser, Recalled, for Plaintiff, Re-direct  
—Re-cross.*

MARY FRASER, recalled for the Plaintiff.

*Re-direct Examination by Mr. Fallon:*

10 Q. You saw Mr. Edward Hollander on the witness stand in this court, did you? A. Yes, sir.

Q. Were you at your daughter's house at a time when he called there? A. Yes, I let him in.

Q. At that time was there any talk between your daughter Lillian and Mr. Hollander wherein your daughter mentioned anything to him about her husband running around with another woman and gambling? A. Never. I heard that conversation and if he had said it I would have heard it but I did not.

20

*Re-cross Examination by Mr. Burke:*

Q. Who was with Mr. Hollander when he called? A. Alone.

Q. There was no other man with him? A. No.

Q. How many times did he call? A. Once. The one time that I know of.

30 Q. Of course, Mrs. Hunke told you that she couldn't pay the rent? A. She said she had no money.

Q. Of course, Mrs. Hunke told you why she couldn't pay the rent? A. I did not hear but I did hear Mr. Hollander say that she could stay there as long as she like to.

Q. There was some conversation about that? A. Not much.

40 Q. There was some talk? A. Yes, sir, a few words.

*Florence Fraser, Recalled, for Plaintiff, Re-cross.  
Edward Hunke, for Defts., Recalled, Re-cross.*

Q. Didn't you hear your daughter say a little while ago that she told Mr. Hollander that she didn't have the money because Mr. Hunke had left home? A. I suppose she did. I didn't hear that. 10

Q. You didn't hear that? A. No.

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FLORENCE FRASER, recalled for the Plaintiff.

*Re-cross Examination by Mr. Fallon:*

Q. When you called with your sister Lillian at the office of Jones and Baker and your sister talked to Kennedy did Mr. Kennedy say anything about Harry living with another woman or that he was supposed to be living with another woman? A. No. 20

Q. Did you hear Mr. Kennedy say to your sister that her husband had admitted to her that he was living with another woman? A. No, I did not.

Mr. Fallon: That is all. 30

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EDWARD HUNKE, recalled.

Q. You consulted with Edward Hollander and asked his advice as a result of letters received from the office of Fallon and Fallon regarding Lillian Hunke after your son had deserted and left her? A. I did not particularly ask advice. 40

*Edward Hunke, for Defts., Recalled, Re-cross.*

I showed him the letter and asked what to answer.

Q. I call your attention to the question and answers contained in your deposition wherein you are quoted as having answered a question  
10 submitted by Fallon on cross examination.

“Q. You consulted with Hollander and asked his advice as a result of a letter received in the office of Fallon and Fallon after your son Harry had deserted her or left her?”

The Witness: Yes.

Mr. Burke: That is not fair with my  
20 witness.

Mr. Fallon: Do you recall that?

The Witness: Yes.

Q. That is true what you there stated? A. Yes.

Q. And another question:

“Q. You had quite a number of conferences with Mr. Hollander?” “A. I don't  
30 remember. I was in his office two or three times, maybe four times.”

Q. But isn't it a fact that you and your wife, before your son Harry had married Lillian Hunke discussed among yourself the possibility of their married life? Didn't both you and your wife discuss with displeasure the approaching marriage?  
A. No, not that I know of.

40 Q. Don't you know that as a result of the talk you had by which your wife said that although

*Edward Hunke, for Defts., Recalled, Re-cross.*

they liked one another that they could not get along then and that she mentioned that because they were scrapping and fighting before they were married that your wife did not think they would get along after they were married? A. I don't remember. We had no objection to their marriage. We paid attention to our own home. 10

Q. I ask you this. Isn't it a fact that your wife said that the match had been made by her parents and that it was displeasing to her? A. I don't remember.

Q. Do you remember that question and answer? A. I do not.

Q. You won't deny any such conversation as that? A. I don't know. 20

Q. You recall that Kennedy came to your house after your son had deserted his wife? A. Yes.

Q. Do you remember when that call was? A. No.

Q. About when? A. I don't remember the exact date.

Q. About how long after October 21st, 1922? A. I imagine the early part of the next year but I really could not say. The latter part of 1922 or the beginning of 1923—I don't remember. 30

Q. When he came there it was to ask you and your wife to pay the money that Harry owed?

A. No, he had to pay a guarantee. He had guaranteed the money and he had to pay it.

Q. And ask you if you and your wife would not pay it? A. Not that I know of.

Q. Do you remember stating in a deposition before Mr. Asper that Kennedy had called over to your home shortly after Harry had gone away? 40

*Edward Hunke, for Defts., Recalled, Re-cross.*

Mr. Burke: He is impeaching the witness.

The Court: There is a difference between impeaching and asking.

10 Mr. Fallon: You do not recall that you testified that Kennedy had called at your house shortly after Harry had gone away?

A. No doubt I did if it is in there.

Q. Don't you remember about that? A. I said before that he was there.

20 Q. Do you remember that he was there shortly after your son went away? A. I don't remember how shortly it was. It might have been the latter part of 1922 and the beginning of 1923.

Q. Was your memory any better when this deposition was made? A. I don't think so, no, but then—

Q. Do you remember that it was shortly after he went away? A. Probably it was. I remembered more at the time when I made the statement than I do now.

30 Q. Isn't it a fact—didn't you heretofore testify in these proceedings that Kennedy came over to your house and asked if you would pay his debts? Isn't it a fact? A. You say I testified to that?

Q. I asked if you remember so testifying? A. I do not know.

Q. Is it a fact that Kennedy came over and asked you and your wife to pay his debts? A. He came over and—whether he came over to ask if I would pay I don't know.

40 Q. Don't you remember this question being asked:

*Edward Hunke, for Defts., Recalled, Re-cross.*

“Q. What was your purpose in anticipating Kennedy? A. No purpose at all. He came over to the house and asked if he would pay his debts.”

Q. Do you remember answering that question referring to Harry's debts? A. He probably referred to Harry's debts. No doubt he did. 10

Q. Isn't it a fact that Mr. Kennedy came over to your house and asked you if you would pay Harry's debts? Isn't that a fact? A. I don't remember. I was there no doubt, but he mostly spoke to my wife.

Q. If you testified to that effect in your previous examination in the deposition you told the truth about it? A. No doubt. But I don't remember. 20

Q. You don't remember? A. I don't remember it now.

Q. Isn't it a fact that in that connection when Kennedy came to your house you asked Kennedy if he knew where Harry went and that you told him no? A. Yes.

Q. Kennedy testified that when he went to your house he asked you where Harry was? And that you said no. A. We asked him and he asked us. 30

Q. Each one of you asked the other? A. Each one of us asked the other.

Q. You never made inquiry as to your son Harry's whereabouts from Kennedy? A. I didn't know where my son Harry was.

Q. I say you never made inquiry as to that from Kennedy, did you? A. I don't remember of having made any. 40

*Edward Hunke, for Defts., Recalled, Re-cross.*

Q. Didn't you wish to have Harry and your daughter-in-law reunited? A. Yes.

Q. But you didn't make any inquiry as to the reunion? A. I was trying to bring about a reconciliation if I could find people who knew where  
10 he had been. It was a hard thing to—not to—

Q. Isn't it a fact that your wife left here in August for Worcester, Massachusetts? A. No.

Q. You knew that your wife and your son Richard and Elmer Walter left Union City to go to Worcester, Massachusetts, on August 6, 1925? A. I don't know.

Q. Do you know that your wife and cousin left to go there? A. I do.

20 Q. You know that Elmer Walter owns a Ford car? A. I don't know what he owns.

Q. Does he store it in your garage? A. No.

Q. Do you mean to say that Elmer Walter does not own a 1919 Ford coupe? A. No.

Q. He also has a Flint coupe stored in your garage? A. I don't know.

Q. Do you know if it is stored in your garage? A. No.

30 Q. Did he ever store there in your garage? A. Never stored a Ford in the garage.

Q. Or a sedan? A. For a while.

Q. Walter was keeping company with your daughter Alice? A. I don't know whether he was.

Q. He came occasionally to your house? A. Oh, certainly.

40 Q. Didn't your son Richard and your wife leave home in August, 1925, going to Worcester, Massachusetts? A. Yes.

*Edward Hunke, for Defts., Recalled, Re-cross.*

Q. And didn't they drive Elmer Walters Flint sedan car? A. Yes.

Q. Was Elmer Walters with them? A. I don't know.

Q. Don't you know that the purpose in going to Worcester, Massachusetts, was to meet your son Harry? A. I do not. 10

Q. Don't you know that your son Harry stopped at the Hotel Newton in Worcester, Massachusetts, on the 14th of August, 1925, and registered under the name of George H. Howell, Detroit, Michigan, and that Elmer Walters also registered at the hotel under the name of H. H. Williams? A. I do not.

Q. You know your son's handwriting. Look at this and see if you can't identify the signatures George Howell and H. H. Williams. A. I could not positively. 20

Q. Does it look like it? A. I simply could not identify that.

Q. You have seen your son's handwriting, Mr. Hunke. I show you this and ask you do you recognize your son's handwriting,—P-1? A. It looks like it but I couldn't say positively. I couldn't identify that because I haven't seen him sign for a long time. 30

Q. I call your attention to the paper enclosed in the envelope—P-1. That word "Harry"—isn't that your son's handwriting? A. It looks like it but I couldn't identify it.

Q. You mean that you can't identify the signature George Howell as the handwriting of your son Harry? A. I couldn't state.

Q. It is similar? A. It is similar, but I couldn't say. 40

*Edward Hunke, for Defts., Recalled, Re-cross.*

Mr. Fallon: I offer that for identification.

(Received and marked Plaintiff's Exhibit 23 for identification of this date.)

10 Q. How long was your wife away from home on that trip? A. Two days.

Q. Did your daughter Alice go with them? A. Yes.

Q. Did your wife report back to you that she and Richard registered at the Hotel Worth in Worcester, Massachusetts? A. I don't know where she stayed.

20 Q. I show you a paper—"Mrs. Hunter and family, New York City." And ask you if you identify that as your wife's handwriting? A. I could not.

Q. Is it your son Richard's? A. I couldn't say.

Q. This looks like your wife's handwriting? A. No, sir.

Q. Does it look like your son Richard's? A. No.

30 Mr. Fallon: I offer this for identification.  
(Received and marked Plaintiff's Exhibit 24 for identification of this date.)

Q. Do you say that your wife after returning from Worcester did not report where she registered in Worcester? A. No.

Q. Did you know that your son Harry was in Detroit? A. No.

40 Q. Did you know that he was working for the General Motors under the name of George Howell? A. I didn't know.

*Edward Hunke, for Defts., Recalled, Re-cross.*

Q. And you corresponded with him under the name of Howell? A. No.

Q. Did he have any correspondence with you up to this time? A. No.

Q. Yes? A. No.

Q. Then to the house? A. Not that I know of. 10

Q. Didn't you testify to his telephoning to the house—didn't you know where the telephone message came from? A. I did not.

Q. Did your wife report to you that when she took your daughter Alice to Worcester that she and Alice registered at the Y. W. C. A. Building? A. I don't know.

Q. Why don't you? A. I ask you if your wife reported that? A. I don't remember. 20

Q. You were anxious to find the whereabouts of your son Harry? A. I was anxious to find Harry.

Q. You lost a son through drowning or something like that, did you not? Wasn't your son Harry present then? A. Not that I know of.

Q. You saw a piece in the newspapers accompanying that notice that the two boys were brothers? A. No. 30

Mr. Burke: Objection.

The Court: Overruled.

Q. Where was this summer place where this mishap happened, what was the name of the place? A. In Paul River, Dale.

Q. New York or New Jersey? A. New Jersey.

Q. You and your wife were present at the time? A. Yes, sir. 40

*Edward Hunke, for Defts., Recalled, Re-cross.*

Q. Who else was present of your family? A. All of our family.

Q. How many boys have you now living? A. One living besides Harry.

10 Q. One living besides Harry—Richard? A. Yes.

Q. He is attending school somewhere in Massachusetts? A. Yes, sir.

Q. When was it that this happened, Mr. Hunke? A. On July 3rd of this year.

20 Q. Isn't it a fact that at that time there was present with you your son Harry and your son Richard besides the son Theodore who was drowned? A. If he was there I didn't see him—not to my knowledge.

Q. When did you last see your son Harry? A. The day before he left.

Q. What day was that? A. Some day in January. I don't remember the date.

Q. He had been living at your house for a time? A. No, he had not.

Q. He was at your house the night you went to the Twin Capitol Theater? A. He was not.

30 Q. Where was he living? If you know? A. As far as I know in New York.

Q. Did he happen to be in your house when you went to the theater? A. He was not.

Q. Didn't he go with you and your wife to the Capitol? A. No.

Q. You were there when he was placed under arrest by Cash? A. Yes.

40 Q. Where was he when you invited him to go there? A. We invited him occasionally. He called at the house on one occasion and I told him if he cared to go—

*Edward Hunke, for Defts., Recalled, Re-cross.*

Q. He had not frequently called at your house before the time you went to the theater? A. He called but not frequently. He called and we always went to see that. That was the only way we could get him back to his family and we tried to persuade— 10

Q. Who was trying to persuade? A. My wife and I.

Q. What did you do? A. We couldn't bring him by the nape of the neck and pull him and try to make him go back to his wife and child.

Q. When in the home you never asked him if he was going back to his wife? A. We did.

Q. Did you ever send her any money from your house? A. No. 20

Q. Don't you know that she sent money from your house? A. No, sir, I gave cash not a check but I put it in an envelope.

Q. Don't you know that he, Harry, used to enclose it in an envelope of Edward Hunke and cross out the word Edward and substitute Harry at the top of the envelope? A. He would call up the house and he would give me cash in exchange for my check and would then ask for an envelope and I would give it to him and he would then mail it. 30

Q. Was one of those envelopes postmarked January 12, 1923 and the other January 21st, 1923? Is that right? A. Right.

Q. About every week at least he sent money to his wife in a envelope such as these from your home, didn't he? A. Not every week. He would come in once a week to mail a check and sometimes a money order and sometimes personally. 40

*Edward Hunke, for Defts., Recalled, Re-cross.*

It happened on these two occasions that he got a check for cash.

Q. I show you a paper dated September 19th, 1923, and ask you if that is your handwriting?

A. My handwriting, yes, sir.

10

Mr. Fallon: I offer that in evidence.

(Received in evidence and marked Plaintiff's Exhibit 25 of this date.)

(Exhibit P-25 was read to the jury.)

Q. This paper that you have identified—Plaintiff's 25—was sent by you with the checks that had been returned to you to Mr. Hollander which you had made payable to Warren Hunke? Isn't that so? A. I think I did not enclose Liberty checks.

20

Q. There was some correspondence between Mr. Hollander and myself. It was turned over by Hollander to you respecting these checks? Was it not?

Mr. Burke: I object.

The Court: I think you may cover that.

30

I will allow you a generous latitude.

The Witness: Yes.

Q. Mr. Hunke, on August 6th, 1925, about 6:30 A. M. your wife, with your daughter Alice and your son Richard went away in Walter's Flint sedan automobile destined for Massachusetts did they not? A. Yes, they went out there at that time.

40

Q. They left for there. You knew that? A. Worcester, yes.

*Edward Hunke, for Defts., Recalled, Re-cross.*

Q. Your wife had a sister named Mrs. Russell living in Worcester? A. I think so.

Q. Your wife had had her sister Minnie with her in Worcester? A. Yes, that is what I was told.

Q. Your daughter Alice was left by your wife when she returned? A. She stayed with an aunt. 10

Q. Isn't it a fact that your Aunt told you that Alice had been left there? A. She did not.

Q. Did your daughter Alice return from there? A. I don't know when she returned.

Q. You knew that your daughter Alice came back about the same time that Walter did? A. I do not know.

Q. This Mrs. Russell, to your knowledge, lived at eight Market Street, Worcester? A. I don't know where she lives. 20

Q. Did your wife tell you that she registered at the Hotel Worth? A. No.

Q. Did you question her? A. No.

Q. Weren't you concerned as to what hotel she stayed at? A. Nothing to be concerned about whether it was one place or another.

Q. You knew that she had not stopped with her sisters? A. She told me that she did not stop with her sisters. 30

Q. When she did not stay with the sisters didn't she stop at the Hotel Worth? A. I don't know what hotel it was.

Q. Didn't she tell you that your daughter Alice had engaged quarters from a woman named Mulligan at number 8 Crown Street, Worcester under the name of Alice Hunter? A. I did not know.

Q. Don't you know that your daughter Alice remained in Worcester until the 15th of August, 1925? A. I don't know how long she remained. 40

*Edward Hunke, for Defts., Recalled, Re-cross.*

Q. Don't you know that your son Harry and this man Walter were at the Hotel Newton on August 19th? A. I don't know. How should I know that.

10 Q. Your son Richard and your wife went away in Walter's Flint sedan, didn't they? A. Yes.

Q. You know also that Walter thereafter went in the Ford sedan, don't you? A. I don't know where.

Q. Will you say now that Walter did not have a Ford sedan in the garage upon your premises? A. No.

Q. Never did? A. No.

Q. Did you ever ride in his Ford sedan? A. I don't remember whether I did or not.

20 Q. I want to read you another question:

“Q. You knew that your son Harry had been indicted and was wanted in this jurisdiction?”

The Witness: I did.

Q. You knew that Officer Sharpley, the probation officer was looking for him? A. I was told but I had not seen him.

30 Q. Sharpley told you that your son was indicted for desertion and that he was wanted by the county authorities? A. I don't know if that was said by Sharpley.

Q. Here is that question again:

“Q. You know that Mr. Sharpley the probation officer told you that your son was indicted for desertion and that he was wanted by the County authorities?”

40

The Witness: I knew that.

*Edward Hunke, for Defts., Recalled, Re-cross.*

Q. You knew that? A. I knew it but I never spoke to him.

Q. If you had heard it did you make any effort to induce your son to return? A. I wanted to get hold of him to induce him to return.

Q. Whom did you inquire from? A. Where 10  
could I inquire?

Mr. Burke: I object to that.

The Court: I think he may ask as to whom he inquired.

Q. From whom did you inquire? A. I didn't know from whom to inquire.

Q. You know that you inquired of Kennedy? 20  
A. He was there and I asked if he had any idea where he lived.

Q. Did you ask Mr. Sharpley to make some effort to find him? A. I didn't ask Mr. Sharpley. I knew Mr. Sharpley was trying his best to find him.

Q. You knew that Detective Cash was looking for him? A. Yes.

Q. Did you give any information as to where he could be found? A. If I knew where he was to be found I would have found him. 30

Q. Did your wife call at the Prosecutor's Office and give to Mr. McMahon the information that he was working for an automobile concern in Detroit? A. Yes.

Q. When did she tell you that? A. I don't remember the date.

Q. What was the information imparted about your son's whereabouts at that time? Do you know that your wife had notified the Prosecutor's 40

*Edward Hunke, for Defts., Recalled, Re-cross.*

Office that she had heard that he was in a certain place? A. Yes.

10 Q. Did you know your wife told you, did she not, that she had told Mr. McMahon, Assistant Prosecutor, that your son could be communicated with under the name of George H. Howell at Detroit Michigan?

Q. I don't know what the name was that she had given. She told me that she went down to the prosecutor's Office and that she gave the name that she had received over the phone by a woman who had called up claiming to be a friend. She gave that address where he could be reached—she gave the Prosecutor some information.

20 Q. How long ago did she do that? A. Last winter.

Q. Did you make any inquiry as a result of the information given to your wife? A. I did not.

Q. Did you write yourself to that address in Detroit to find out if a communication sent there would reach your son? A. I did not.

Q. Why? A. I did not answer because my wife had the matter in hand and I knew if she knew that she would answer.

30 Q. She had what—A. About the information.

Q. She told you about that? A. Yes.

Q. Why didn't you make an effort to locate your son by correspondence or otherwise? A. I did not want to interfere with the authorities. We thought that he would be reached better by the authorities or my wife and I.

Q. You did not notify Lieut. Cash? A. I think we notified the main authorities.

40 Q. Did you notify Cash? A. No.

Q. Did you notify Probation Officer Sharpley?

*Edward Hunke, for Defts., Recalled, Re-cross.*

A. No, my wife thought that the Prosecutor would notify the proper people.

Q. You were content? A. I think she was doing what she could.

Q. Didn't you think at that time that Alice reported to you that she was spending her Christmas of 1924 with your son Harry in Detroit? A. Not that I remember. 10

Q. Your daughter Alice was in Detroit December 1924? A. Not that I know of.

Q. Your daughter Alice up to the time of this suit lived at your home regularly? A. Yes.

Q. After this suit was started she was away from your home a great deal of the time after that? A. I don't know where or when. 20

Q. She was away from your home a great deal at the time after the suit was started? A. She stayed in New York on account of her position in New York.

Q. She had some position in New York? She had a position with the United States Shipping Board? A. Yes or helped out at that time of the year. She isn't allowed to travel—that is the reason she stayed over there.

Q. Your daughter Alice only visited your home on Saturdays, not week days? A. She came to visit us. 30

Q. Don't you know that she only came there on Sunday nights? A. I don't know if it is only Sunday nights. I don't remember.

Q. You knew that I was anxious to subpoena Alice? A. I heard of it.

Q. Isn't that because of Alice keeping away? A. No. 40

*Edward Hunke, for Defts., Recalled, Re-cross.*

Q. Isn't it a fact that you had been transferring property to Alice and had already transferred property to Alice, and that you knew as a result of supplementary proceedings that I wanted Alice—

10           Mr. Burke: I object.  
              The Court: Strike it out.

Q. You have not taken that upon yourself since October 1922 when you sent them away to see your grandchild, have you?

              Mr. Burke: I object to that as incompetent, irrelevant and immaterial.  
20           The Court: Yes, I do not think that is proper.

Q. Did you, at any time, since October 1922 try to see your daughter-in-law Lillian Hunke?

              Mr. Burke: I object.  
              The Court: I think that might be proper under this line of examination.  
              The Witness: I did not.

30           Q. Florence was there—had called at your banking house and had asked you to render assistance to your grandchild?

              Mr. Burke: I object.  
              The Court: I will allow it.  
              The Witness: She was there.

40           Q. She asked you for assistance for the child?  
              A. If I remember correctly she asked for money.

*Frank A. Gillen, for Defts., Recalled, Re-direct.*

Q. You asked her how many doctors you had had? A. No.

Q. You did not give her any assistance, did you?

Mr. Burke: I object.

10

The Court: No, don't do that.

Mr. Fallon: That is all.

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FRANK A. GILLEN, recalled, for the Defense.

*Re-direct Examination by Mr. Burke:*

20

Q. What records have you with you now? A. The sales tickets—what might be termed the book of original entry.

Q. Where did you get them? A. The vaults.

Q. Do they show the sales in connection with this card? A. Yes.

Mr. Burke: If your Honor please I offer the cards and tickets for what they are worth. 30

Mr. Fallon: What is the object of that?

Mr. Burke: The sales were on credit there, not cash as Mrs. Hunke testified.

Mr. Fallon: I object to all these records. They are not purchases made after the marriage.

The Court: Fix it as to such things that you want sent to the jury. 40

Mr. Burke: I want the jury to consider everything.

*Frank A. Gillen, for Defts., Recalled, Re-direct.*

Q. You did not make this record?

The Witness: No.

Mr. Fallon: I object to it.

10 I will admit the two purchases—the bedroom suite—rather than quarrel over it—the item of \$356 on July 15th, 1919 with the card on the same day with the one hundred—

The Court: Where is the record? Here is the item which they offer. The other card has nothing to do with it.

Mr. Fallon: I have no objection to that record.

20 Mr. Burke: I offer that in evidence.

(Received in evidence and marked Defendant's Exhibit 3 of this date.)

Mr. Fallon: I am objecting to that record.

The Court: There have been other things put in there?

Mr. Fallon: Yes.

The Court: They cannot go in then.

Mr. Burke: Exception.

30 Q. Can you tell by reference to the record whether or not the indebtedness of Harry Hunke to Greene Company was ever paid in full?

Mr. Fallon: I object to that.

The Court: What difference does it make in this case? The only thing is the condition of the plaintiff's testimony that certain furniture was paid for in cash.

Mr. Fallon: Yes, sir.

40 The Court: Now you have a record of

*Catherine Hunke, for Plaintiff, Recalled, Re-direct*

certain furniture purchased on credit. What difference does it make if it was paid for afterwards or not?

Mr. Burke: All right.

10

CATHERINE HUNKE, recalled by the plaintiff.

*Re-direct Examination by Mr. Fallon:*

Q. You know Elmer Walter? A. Yes.

Q. He is the young man who keeps company with your daughter Alice? A. No. 20

Q. Elmer has been in your house a great many times? A. Yes.

Q. Elmer stores his car in the garage attached to your house? A. He did at one time.

Q. A Flint sedan? A. Yes.

Q. That Flint sedan you and your son Richard and your daughter Alice went to Massachusetts in? A. Yes.

Q. Walter went to Massachusetts while you were there too? A. No. 30

Q. Didn't you see Walter in Worcester, Massachusetts? A. No.

Q. You and your son and your daughter Alice went? A. Yes.

Q. You and Alice went to the home of a woman named Gertrude Mulligan at number 8 Crown Street? A. I don't know the woman's name. I know it was at 8 Crown Street.

Q. You and your daughter arranged to engage a room there? A. Yes, sir. 40

*Catherine Hunke, for Plaintiff, Recalled, Re-direct*

Q. She engaged the room, you being present with her—under the name of Alice Hunter? A. I don't know the name she was registered under.

Q. Your sister Minnie was with you wasn't she?

A. I think so.

10 Q. You stopped overnight at the Hotel Worth, did you? A. Yes.

Q. I call your attention to the name, "Mrs. Hunter and family", New York City 12:05 p. m. rooms 66 and 67 and ask you if you recall having so registered in that hotel on October 6th, 1925?

A. Not as Mrs. Hunter; I never registered under that name.

Q. Who wrote that name? A. I do not know.

Q. You saw it written? A. No.

20 Q. Didn't you testify before that you thought it was your son Richard? A. I thought maybe—that is not Richard's.

Q. And not yours? A. No.

Q. You know that you were registered Thursday, October 6th at the Hotel Worth? A. Yes.

Q. Do you find any name other than that of Mrs. Hunter and family—if so, indicate it. A. The only name.

30 Q. You know that you got there about seven P. M. that night? A. Yes.

Q. You know that you occupied rooms 66 and 67? A. Yes.

Q. You see by this paper that the rooms occupied by Mrs. Hunter and family are written opposite to the name as registered? A. Yes.

Q. You still say that you did not sign this "Mrs. Hunter and family"? A. No.

40 Q. You do not know who signed it? A. No.

*Catherine Hunke, for Plaintiff, Recalled, Re-direct*

Q. I show you a paper the top of which bears the notation, "Hotel Newton, Friday, October 6th, 1925, and I call your attention to the names "George H. Howell and H. H. Williams, Detroit, Michigan", and ask you if that is not your son Harry's writing? A. I have seen my son's writing but it is such a long time ago that I don't remember it. 10

Q. You have received a good many letters from your son Harry? A. No, I have not.

Q. Are you prepared to say that this is not your son's handwriting, the George H. Howell and the H. H. Williams—I mean Howell? A. No.

Q. Doesn't it look like that of your son's? A. No, it is very doubtful. 20

Q. You did meet your son Harry there at that time? A. Where?

Q. Worcester. A. No.

Q. You are sure? A. No, I went to see my son and sister.

Q. You did not stay with your sister? A. No, I did not stay because she had no room.

Q. Your sick sister's name is Minnie? A. Yes.

Q. The Russells lived at 8 Market Street? A. Yes. 30

Q. Richard drove the car for you? A. Yes.

Q. Did you say that Elmer Walter and your son did not come into Worcester in a Ford car while you were living there? A. No, they never came there—

Q. You know that your son was in Detroit, Michigan, for Christmas, 1924, don't you? A. I only knew where he was—I got a line on it when I got a telephone call over the telephone in- 40

*Catherine Hunke, for Plaintiff, Recalled, Re-direct*

forming me—this party said she was a friend of mine—because I had complained very much about our predicament. They called up and gave the telephone address in Detroit. That is the only time I ever knew he was in Detroit. I didn't  
 10 know if he was there or not.

Q. That was in 1925? A. Yes. I went down to the Prosecutor and gave him the address. I said, "Please relieve us from this terrible strain, because I can't stand it any longer—it is killing me."

Q. I am asking you the question: On December 24th—Christmas time—didn't you know that your son Harry and daughter Alice were together  
 20 in Detroit? A. No.

Q. Wasn't your Alice in Detroit with Harry in 1924? A. No.

Q. Where was your daughter at Christmas time, 1924? A. I don't know.

Q. This name you say came over the telephone? A. Yes.

Q. It was said that your son could be located under the name of George H. Howell, care of David H. Lord, 910 Times Building, Detroit? Do  
 30 you remember that? A. No, I was given the name J. W. Carter.

Q. Did you try to locate him? A. Yes.

Q. Did you write a letter to J. W. Carter? A. I wrote to a man by the name of Lord, but I never saw him.

Q. Who told you to write to Lord? A. Because I got the information over the telephone.

Q. You are sure the name was that of Carter?  
 40 A. Yes, sir, I was told that he received his let-

*Catherine Hunke, for Plaintiff, Recalled, Re-direct*

ters from a man by the name of Lord in the name of J. W. Carter.

Q. You don't know if he was there—this was told you? A. No, on account of the messengers.

Q. In the day or night? A. Sometimes in the morning. 10

Q. You knew that Lieut. Cash was looking for your son? A. Yes.

Q. Why didn't you tell him the information? A. He asked if I knew where he was. I said, "If I knew where he was I would get him and bring him back to his wife and child."

Q. After getting this information to let you know, why didn't you— A. I went back to the Prosecutor. 20

Q. You didn't go to Cash? A. No.

Q. You knew Mr. Percy Sharpley was looking for him. A. Yes.

Q. Why didn't you go to him? A. I didn't know where to find him.

Q. You told your husband about it? A. I did.

Q. He suggested going to the Prosecutor? A. Yes.

Q. Did you tell him what happened? A. Yes. 30

Q. Don't you know that you went to the Prosecutor and gave the name of David H. Howell, care Lord? A. No. J. W. Carter.

Q. Your letter to the Carter, care of Lord, came back to you or didn't it? A. No, because I failed to put the return on the back. That was a mistake of mine.

Q. You didn't put your name on the inside? A. No.

Q. You didn't put it on the top—the home ad- 40

*Catherine Hunke, for Plaintiff, Recalled, Re-direct*

dress and sign it "mother"? A. I signed—I was his mother and if it was the right party—

Q. You did not put the house number at the top of the letter? A. No, I did not.

10 Q. If you think you were so anxious to have your son go back to his wife why didn't you see his wife's attorney about his whereabouts? A. Because I went to the Prosecutor.

Q. Did you go back to the Prosecutor the second time and make any inquiry? A. Yes, sir.

Q. When? A. Oh, time after time.

Q. Who did you see? A. A man—

Q. Was it the same man you had seen in the first instance? A. I don't remember.

20 Q. Mr. McMann? A. I asked the man at the desk to tell me if Mr. McMann was in the second time. He told me that Mr. McMann was not in. I asked him what to do about the case and he said, "I don't know. We have not located him yet." I said, "I wish you would tell Mr. McMann to go about it. I want to be relieved of this terrible strain. I can't stand it any longer."

30 Q. If you wanted to be relieved why didn't you notify the daughter-in-law, or the attorney? A. I didn't want any trouble. Why didn't she come to me?

Q. Mrs. Hunke, you called at the office of Fallon and Fallon and saw John J. Fallon, junior, on one occasion, didn't you?

Mr. Burke: I object to that.

40 Mr. Fallon: We are charging in the complaint of keeping him away from his wife.

*Catherine Hunke, for Plaintiff, Recalled, Re-direct*

The Court: I think the witness may be asked those questions.

The Witness: (Continuing) I believe I did because you were trying to get too much money out of it. I told you you were asking too much money for it.

10

Q. The too much money that you refer to was the three dollars a week that we were trying to get.

Q. (Continuing). Why didn't you tell Mr. Fallon, junior, if you got this name as to your husband's whereabouts? A. I didn't get any information then. I only got the information some time either in December or January.

20

Q. Of what year? A. Last year.

Q. When did you call to see Mr. Fallon, junior? A. It is four years or three years ago, maybe.

Q. Will you say it was three or four years ago? A. It was the time when you wanted fifty dollars and there was a bill of eighty dollars come to the house.

Q. Have you any papers here to indicate that? A. No, I am just saying that that is the reason I went down to Fallon's office. I wanted to tell —the fact is if you went there to tell him that you would not pay the three dollars a week? A. No.

30

Q. When did you last hear from your son Harry? A. When he left he called up in the morning on the telephone and said, "Good-bye Mama."

Q. When? A. I think it must have been the day after he was in Judge Lazarus' court.

40

*Catherine Hunke, for Plaintiff, Recalled, Re-direct*

Q. You, as his mother—do you mean to say that you have not tried more than as just stated to find out the whereabouts of your son? A. Yes.

Q. Was there any other effort? A. I have made lots of efforts.

10 Q. Tell us. A. I went to 215th Street where he was living before when he was married, and I inquired there because his wife told me that he always went out with a girl in the morning to work and I wanted to see if I could find that girl—she would probably know the whereabouts of my son.

Q. When was that? A. Some time—I really couldn't say the exact time.

20 Q. What prompted you to go to 215th Street? You say that it was because your husband lived there before? A. Yes.

Q. What reason had you to go up there where he was living before to inquire about another woman? A. Because my daughter-in-law had told me that he went out to work with this girl every morning.

Q. Did he tell you where the girl was living? A. She lived in the house.

30 Q. Your daughter-in-law told you that? A. Yes.

Q. Did you find the girl? A. No.

Q. Did you ever meet such a girl? A. No, I did not.

Q. You did hear that Detective Cash went to talk with this young—with Lillian Hunke to locate the girl? A. Yes.

40 Q. Did you know that the young girl you went to locate was the same girl that you are now talking about? A. No, I didn't know that.

Q. What other effort did you make to locate

*Catherine Hunke, for Plaintiff, Recalled, Re-direct*

your son? A. I went to Wagner's where my son worked as a bookkeeper.

Q. Why did you go to Wagner's where he worked at the time he disappeared? A. I thought that maybe he would come back some time; they were pretty well acquainted with him. 10

Q. When did you go to Wagner's? A. I think it was the beginning of last year.

Q. The beginning? A. I really couldn't tell you when I was there.

Q. What effort did you make between 1923 when your son left and last year when you say you went to Wagner's? A. I made several efforts. I went to New York to Mr. Kennedy trying to find out where my son was. 20

Q. Have you seen Kennedy since 1923? A. I really couldn't say but I remember that I seen him.

Q. When you say you saw him he was then in Jones and Baker? A. Yes, with my sister.

Q. Your sister Minnie was with you? A. Yes.

Q. You know that you saw him in your home? A. Yes.

Q. You saw him after that—he called at your home after that? A. Yes. 30

Q. Several times? A. No, he only wanted to know if I had seen him.

Q. That was how long ago? A. Oh, that was shortly after I was over to Jones and Baker to inquire if he knew where my son was and he came over to see if I found out where he was. I told him that I wouldn't stop hunting until I had brought him back safely to his wife and child.

Q. Why didn't you follow him out if you knew he was in Detroit? A. I would— 40

*Catherine Hunke, for Plaintiff, Recalled, Re-direct*

Q. You said you would go there if you— A. No, I told the Prosecutor that I had that rheumatism and I—

Q. Didn't you say if you knew he was there you would go and bring him back? A. Yes, I think—

10 Q. Have you not been able to go to Detroit since you received that name? A. No.

Q. That is the reason? A. The rheumatism, yes.

Q. Did you write the police authorities in Detroit that he was known as Carter and that— A. No.

Q. Now, isn't it a fact that you did do that? A. I thought if I went to the Prosecutor that he would be able to tend to that.

20 Q. When you 'phoned to the Prosecutor's Office the information that you had gleaned, weren't you anxious to see your son? A. I am very anxious to him, yes, because no mother would—he is my boy.

Q. You made no other effort in the last four years? A. I knew he was going to the dogs.

Q. Did you think that your son was going to the dogs? A. I think so.

Q. Didn't you make any effort at a reconciliation before he had gone away? A. I did.

30 Q. You remember Mrs. Fraser's coming to your house? A. Yes.

Q. Do you remember saying, "What can you do if they can't live together—that they must break up?" A. No.

40 Q. What did you do? A. She came to my house crying. She said it was such a terrible trouble in Harry's going away. I said, "Yes." She said, "What can you do?" I said, "I don't know what to think. Why do they quarrel?" She says, "Can you do anything?" I said, "I will do all I can."

*Catherine Hunke, for Plaintiff, Recalled, Re-direct*

We had a very friendly talk. My remarks were friendly. I said to her, "If your daughter would only be nice to me." I said that they came up to my door and called me names, and about coming up to court. I said, "Wait until I get my clothes on," because it was cold. I said, "Wait until I get my clothes on and I come down and you can see whether Harry is here or not." I went and got my clothes on and when I got down to the door they were going down the street sticking their fingers up to their noses. She says, "Are they mean to you, too?" 10

Q. Was that when Mrs. Fraser spoke to you and you told Mrs. Fraser if her daughter— A. I said if she came to me I would do anything for her. 20

Q. You were a little embittered against the girl? A. No.

Q. Before the marriage, weren't you? A. No.

Q. Didn't you tell your husband that they were scrapping and wouldn't get along after they were married? A. No, see—I said, "They are not so quarrelsome—maybe they can adjust this."

Q. So far as you know they got along up to October, 1923? A. No, they did not.

Q. If they did not why did you think that there would be a reconciliation possible between them? 30  
A. Everything is—

Q. What did you do—if you say they were getting along so famously as to their living conditions? A. I knew that they had quarreled in the spring of 1921. She came down with the sister to my house on 200-15th Street. She said that she had come down for the sole purpose of letting me know what my son is. I said, "What is the trouble?" She says that he goes out every 40

morning with another girl—that he is running around with women and I am always left alone.” She says he stays at Wagner’s.

Mr. Fallon: Yes, continue.

10 A. I said, “That is terrible; I will talk to him about it.

Q. You knew that your son was not that sort of a man? A. I knew that he was a good boy but I knew that he was getting a trend for women. That is the time my boy—

Q. Did you know that he was getting a trend for women? A. There is such a stage in the life of every man.

20 Q. You mean, perhaps, that when they reach the age of puberty they become anxious? A. Yes.

Q. You think then that he would like to have a woman? A. He said so himself.

Q. Didn’t you testify in the other proceedings that you were anxious to see him get a woman? A. Get a woman and settle down and quit running around.

Q. Didn’t you say that you were anxious to see him settle down? A. Yes.

30 Q. And then you told your husband that they were scrapping before they were married? A. Not exactly I only said I hoped how they would get along.

Q. At the time you called the office of Fallon and Fallon and talked to John J. Fallon, junior, weren’t you quite angry in speaking about the liability—about Lillian Hunke, and why she had to have a sixty dollar apartment to live in? A. I don’t remember about that.

40

*John J. Fallon, Junior, for Plaintiff, Direct.*

Q. Don't you remember getting off quite a burden of abuse against that girl? A. I did not.

Q. Do you remember what you did say? A. I don't remember. There wasn't much said.

Q. Don't you remember making the statement of why he went to live in a sixty dollar apartment? 10

A. Not as long as my son was willing to pay.

Q. Do you remember that statement to Mr. Fallon, junior? A. No, she was not living in a sixty dollar apartment then.

Q. Didn't you tell Mr. Fallon, junior, then that your daughter-in-law was too extravagant—and that she should not be living in a sixty dollar apartment? A. No.

Q. Do you remember that? A. No. 20

Q. And yet you say you did not? A. I was anxious to make amends in some way—that is all.

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JOHN J. FALLON, Junior, sworn for the Plaintiff.

*Direct Examination by Mr. Fallon:* 30

Q. You are a counsellor at law of this state?

A. I am.

Q. You are a member of the firm of Fallon and Fallon? A. I am.

Q. Do you recall the visit to Fallon and Fallon by Catherine Hunke? A. I do.

Q. Was she at the office more than once? A. I saw her only once. 40

Q. At that time do you recall having made a

*John J. Fallon, Junior, for Plaintiff, Direct.*

memorandum which I show you—after she left?  
A. Yes.

Q. That memorandum was made and placed upon my desk? A. It was.

10 Q. Do you remember just what conversation you had with Mrs. Hunke that time? A. Yes, I do.

Q. Did Mrs. Hunke, at that time, say to you anything about being displeased with her daughter-in-law's living in a sixty dollar apartment?

Mr. Burke: I object to that. That is not a proper way to bring that out.

The Court: That is all right, I will allow it.

20 Mr. Burke: Exception.

Q. Did she at that time say anything about a bill for \$80 or \$50 presented to her husband for payment? A. I don't recall that she made that statement.

Q. Was there a talk about money at that time?  
A. There was a talk about money.

Q. What was it?

30 Mr. Burke: I object to that.

Q. Was it about a payment of three dollars a week? A. It was.

Mr. Burke: I object.

40 The Witness: (Continuing) Mrs. Hunke said her husband might be able to pay three dollars a week towards the support of the grandchild but that he might not be able to pay it every week.

*Lillian Hunke, Plaintiff, Recalled, Re-direct.*

Q. What was her attitude at that time—calm  
or—

Mr. Burke: I object to that.

The Court: Sustained.

Mr. Fallon: That is all.

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LILLIAN HUNKE, Plaintiff, recalled.

*Re-direct Examination by Mr. Fallon:*

Q. I show you this paper Mrs. Hunke and ask  
you if you can identify the signature of George  
H. Howell and H. H. Williams, Detroit, Michigan? 20  
A. That is my husband Harry Hunke's handwrit-  
ing.

Mr. Fallon: I offer that in evidence.  
(Received in evidence and marked Plain-  
tiff's Exhibit 26 of this date.)

Mr. Burke: Your Honor I respectfully 30  
move for a direction of a verdict in favor  
of both defendants because there is no proof  
—legal proof in this case that these de-  
fendants or either of them are guilty of any  
of the charges set out in the complaint.  
There is no proof that the situation exist-  
ing between Harry Hunke and his wife was  
the result of or resulted from any conduct  
or act or word on the parts of either of 40  
them. If there was any doubt about it at

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10 all at the time the motion of the defend-  
ants was made for a non-suit I very re-  
spectfully submit that it has been removed  
by Mr. Fallon, Edward Hunke and Cath-  
erine Hunke. They have both been sworn  
and he is bound by their sworn testimony  
that they did not do any act or thing as  
charged in this complaint. I very respect-  
fully submit that the law in this State and  
this jurisdiction is such that the conduct  
of these parents with reference to their  
children was such that the plaintiff is not  
entitled to recover. It seems to me to be  
quite clear now from the testimony of Mr.  
20 and Mrs. Hunke that they did not do any-  
thing—on the contrary they wanted Harry  
and his wife to live together. They have  
said so. Let us take Edward Hunke. I will  
call on Mrs. Hunke only as to what she  
talked to him about on the ferry boat. She  
did talk. He did not say anything.

30 So far as Edward Hunke is concerned I  
respectfully submit that there is not one  
scintilla of proof in this case. I ask for  
the direction of a verdict. She talked and  
she was fairly entitled to talk and give such  
advice as she did. I ask your Honor to call  
to mind certain things in this case. Your  
Honor certainly gave much latitude yester-  
day in the questioning as to what Mr.  
Hunke did tending to show that he had  
alienated the affections—tending to show  
that he had enticed the son away from his  
40 wife. Was there a single thing that your  
Honor can think of wherein they are re-

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sponsible, even if there were some mistakes made by Mrs. Hunke and mistakes by Mr. Hunke? I say that they have a right to act as a father and mother should act and that they did so as the evidence in this case shows. The evidence shows that the mother went to the Prosecutor's Office with the one thought that there might be a possibility of locating the boy. In carrying out their burden I think they went even one fact beyond that. I very respectfully submit that there is no cause of action proven. 10

So far as Mr. Hunke is concerned I think that he is equally entitled to a directed verdict the same as Mrs. Hunke. Make them separate. 20

Mr. Fallon: There is no such thing in their entire pleadings as a justification of this talk about good faith. In these pleadings there is an allegation by the plaintiff of influence brought by these defendants and it is backed up by testimony of alienation of affections and not enticing. They did not act as counsel says in good faith and from proper motives. They deny that they had any participation in the matter. They do not claim mitigation or exoneration of liability. Theirs is a complete denial of the allegation of the plaintiff and not what was suggested by Mr. Burke about their acting in good faith because they deny that they advised their son. 30

Coming down to the testimony in the matter, if there ever was a jury case it is this one. There is a mass of contradictory 40

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10 testimony that only a jury can solve. The evidence against this Edward Hunke is that on the 12th of October he was present when he heard his wife suggest to Harry the breaking up of the home and putting the stuff in storage and each one going to work, living by themselves or each going to his parents. That was the twelfth of October, 1922. The testimony of the plaintiff is that up to that time there was nothing but harmony prevailing in her household. They were living in New York and her husband was a good dutiful husband. He came home and made his home with his wife and child in his apartment. When he came over here—about two months later a sinister purpose was created. He remained away from home and he visited his parents considerably. Now the testimony shows— out of the mouth of Hunke himself—that she, his wife, was not pleased with this marriage. I think the jury has a right to say from her statement as narrated by Hunke that she did not want this condition to continue and when this thing began. This was engineered by the parents of Lillian Fraser and yet they would have the effrontery to say that she was anxious to see her son married and happy. On the 21st of December we have the situation of Mrs. Hunke the mother, the mother of Harry Hunke going into the home and preaching about breaking up the home. This young woman Lillian Hunke was 22 then. She was 19 when she was married and this happened in 1922. She

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talked of large rent and about putting their furniture in storage and about their saving money to pay debts. Counsel in speaking to the jury preached about gambling debts. Kennedy entered into a contract with a guaranty company about money loaned on the Morris Plan and guaranteed the payment of this three hundred dollars. Then she, the mother of Harry Hunke, comes to the home with this sinister and nasty statement about the nuisance of keeping the home. She waited until one or two in the morning until her son came home, then she was not content to speak to him on the spot—instead of speaking to him there she took him aside and what she said the daughter did not know. The next morning—the 21st of October Hunke left home and as usual, did not return that night. The next morning Mrs. Hunke and her sister went to this home and inquired if he was there. She, Lillian, was crying and Miss Fraser did the talking. They had gone to inquire about Harry because the husband did not return overnight. The mother-in-law raised the window and said, "What do you want?" The sister said, "Harry was not home last night." She, the mother-in-law said, "Go home and go to bed." The sister said that she had seen Harry's top coat on the back of the chair. Mrs. Hunke, senior, said, "Go to bed" and pulled the window down. The mother said, "I can't come to the door because I am in my night clothes." The sister said, "we are women and there is no

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reason why you can't let us in." What was in there they didn't know but they thought that she was harboring him in there. The coat was on the chair, there is no doubt about that fact.

10 Then we have old lady Fraser going to her and asking, "What can you do about it?" She says, "I can't do anything." Then Mrs. Fraser said, "You ought not to do that; you ought to bring this young couple together." Mrs. Fraser says, "If you don't they will take it to law and go to court." Mrs. Hunke said, "All right, go to it, and I will fight her, too." Is that the attitude to take when a son is away from his wife?

20 And then the ferryboat episode—"Have you heard from Harry? Don't you feel worried?" He says no very abruptly, if he was not vindictive toward the girl.

30 Didn't he suppose that she had some comfort coming? It is a manifestation of the devil in his heart to bring about this separation. Take the testimony from the book on the other proceedings. Asked if he didn't hear his wife say those things on the several occasions that they should break up home. He says he did not say it. He does say that the wife said it.

Under the law the husband is responsible for the torts of his wife. He is responsible for the torts because of his activities in this matter and his machinations in bringing about this matter.

40 Then we have another instance—the instance of when the child was sick. The

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sister went to the bank. Your Honor will recall that he admitted that he did not give any assistance. That was said while he was on the stand. What was the better, the decent thing to do, when the abandoned wife and child were very ill as they told him? There was no compassion in his heart. He was a cashier in a bank and not able to advance a couple of dollars! 10

Then we have the matter of the instance of December 1st, when Edward Hunke, accompanied his son to his home when Harry removed his things from his home. We have the assurance of Florence Fraser that he was not alone and the witness Mrs. Stone says that she knows he took these things alone. It is a question for the jury to say who is telling the truth between these two parties. 20

Then we come to the activities in Massachusetts. This is a trip to Massachusetts in the Flint sedan, going to Massachusetts to look up Harry. She say she did not see Harry when she went to Massachusetts. She knew that she went there with her two daughters and her son Richard—Richard driving the car and staying at the Hotel Worth in the rooms mentioned here. She remembers that she occupied these rooms. She does remember that they occupied room 66 and 67 of this hotel. This separation was occasioned by another woman. If we need any testimony to substantiate that statement we have it right here in that of the witness Kennedy. This is the incident 30 40

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of the two hundred borrowed on the Morris Plan that he, Kennedy, had guaranteed. He said that he did not go to Hunke's house to get the money. His testimony shows that he did—emphatically so. How are you going to deal with this testimony? You know that that was gotten into the testimony yesterday over my strenuous objection when we were talking about this conversation that he had with Lillian Hunke. He said there was a lot of gossip going around about him and this cashier—another woman. This is the woman that he was supposed to be living with. Emphatically he said that. This testimony came in latterly. You will remember when I was trying to draw this from him that he said Harry Hunke had admitted to him that he was living with another woman. He said previously that he had heard some of this from some other source. If that is the truth that this man was living with another woman what does the jury think of his employers keeping such a man in a brokerage house for even one minute. This is a house of fiduciary interests and when the strictest rectitude is required of each and every employee. Place no credence on him or his statements. I respectfully submit that this case is so brimful of facts, broken up, capable of making a whole, that there should be a directed charge in this case. It is a jury case. It is not a case that should not be settled by a judge as a matter of law.

There is no liability on the part of this

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plaintiff. The liability in this case is directed toward the defendants as testified to by the various witnesses on this stand. They cannot merely say I did not entice, I did not alienate his affections, I did nothing that caused him to desert his home. That is a matter for this jury. They are the ones who should have the facts in the case and it is for them to say what is the truth. 10

I respectfully submit that this case should be sent to the jury and that the non-suit be denied.

The Court: I think there is enough in this case for the jury. 20

Mr. Burke: I take an exception.

(Mr. Burke sums up on behalf of the Defendants.)

(Mr. Fallon sums up on behalf of the Plaintiff.)

Mr. Burke: I respectfully ask for a mistrial because of the fact that Mr. Fallon named figures to the jury in his summation.

The Court: He has a right to do that I think. 30

## CHARGE TO THE JURY.

The Court thereupon charged the jury as follows:

Members of the Jury:

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This plaintiff, Lillian Hunke, a married woman, alleges in her complaint that Edward Hunke and Catherine Hunke, who are the mother and father of her husband, by wrongful conduct alienated the affections of her husband, Harry G. Hunke, from her and caused him to leave her and she brings this suit against these two defendants, asking them to respond in damages for their wrongful conduct.

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These defendants deny the charges, so, before the plaintiff can recover she must satisfy you by preponderance of evidence that these defendants, or one of them, by wrongful conduct, alienated her husband's affections from her and caused him to leave her, thereby losing the support, society, and consortium of her husband, although pecuniary loss is not necessary for her right of action.

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There have been a motion to non-suit and a motion to direct a verdict for the defendants which have been refused by the Court, but that is no indication, whatever, of how you should decide this case. It is simply a decision of the Court that this is a case for the jury to decide and not one for the Court to take away from your consideration, so the whole case must be decided by you on the evidence you have heard.

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Counsel for the defense has asked me to charge the jury that because the Court refused to grant the request for a non-suit that this is not to be

*Charge to the Jury.*

taken by the jury as in any way prejudicial to the defendants and the jury are not to consider because the Court refused the motion that the facts are for the jury and not the Court and it does not indicate the Court's opinion in any manner whatsoever. I so charge, that that is the law. You are to determine the facts in this case from the evidence that you have heard, applying the rules of law the Court will lay down for your guidance. You are not to rely on the remembrance of counsel as to what the evidence has been or on anything the Court may say in reference to the evidence. You are the sole judges of what the evidence has been, and you are also the sole judges of the weight and credibility that you will give to the testimony of the witnesses that you have heard. In determining the weight that you will give to the testimony you have a right to consider whether on other occasions these witnesses, or any of them, made contrary statements to those now made on the witness stand.

You are to decide this case from all the evidence, applying the rules of law that I will lay down for your guidance, and when you have decided the case in that manner, then your verdict will be the proper verdict.

This case has been so ably tried and counsel have commented on the evidence so fully that I do not intend to refer to it, but will only call your attention to the rules of law that you are to apply to the facts you find have been established by the evidence in order to properly decide this case.

The question for you to decide is not whether the plaintiff has lost the affection of her hus-

*Charge to the Jury.*

band, or whether he has abandoned her. That is not te question. You are to determine from the evidence whether she has last the affection of her husband, whether her husband had left her by reason of wrongful conduct of these defendants, or the wrongful conduct of one of them, for, if the plaintiff has lost the affection of her husband through no wrongful conduct on the part of the defendants, or either of them, it will be a deplorable fact, but these defendants would not be responsible for the wrongful conduct of her husband. The plaintiff can not recover if her husband bestowed his affections on other women, or on another woman, and deserted her without any wrongful conduct on the part of these defendants, or either of them.

This action is based upon the alleged wrongful conduct of these two defendants which resulted in the leaving of this plaintiff by her husband and if this is not proved, of course, there can be no recovery. You can not find a verdict for the plaintiff because of the wrongful conduct of her husband, unless that wrongful conduct has been caused by the actions of his parents, or either of them. In other words, before the plaintiff can recover you must be satisfied from the evidence that you have heard in this case that these defendants, or either of them, by wrongful conduct, alienated the affections of Harry G. Hunke from his wife and caused him to desert her. Even if unhappiness is shown to exist between the plaintiff and her husband, if the fact is that the husband had little or no affection for his wife—that is no defense in this action. Even if Harry G. Hunke has no affection for his wife, these de-

*Charge to the Jury.*

defendants would have no right by wrongful conduct on their part to cut off all chances of a straightening out of these questions in the future; it is better that the husband and wife should live together in that state or condition, even if the married life is a loveless one. 10

The mere fact that the husband of the plaintiff deserted his wife and child without any justifiable or reasonable cause will not entitle the plaintiff to recover in this suit against the defendants, even if they are parents of her husband. This action is not based on the wrongful conduct of the husband in leaving his wife and child without means of support. Neither of these parents can be held liable for the wrongful conduct of the husband of the plaintiff. They, or either of them, can only be held liable if it appears from the evidence that the husband lost his affection for his wife and deserted his wife by reason of the wrongful conduct of these defendants or one of them. A parent, of course, is liable for any wrongful alienation of his married child or wrongful conduct which causes the married child to leave his wife but only when the conduct is malicious, but parents, when prompted by a sincere desire to promote the welfare and happiness of their children may do so when acting in good faith, without being liable for alienation, especially when the alienated spouse is an infant. In this case the husband was considerably over age. Parents are not justified in disrupting a marriage or separating parties after such marriage merely because it was entered into against their wishes. 20 30

In this case, if you find from the evidence that these defendants, by their wrongful conduct, 40

*Charge to the Jury.*

caused Harry G. Hunke to leave his wife, there can be a verdict against them both. If you find that Catherine Hunke by her wrongful conduct alienated the affection of Harry G. Hunke from his wife and caused him to leave his wife, you  
10 must find a verdict against her, and if you find that her husband, Edward Hunke did not use wrongful conduct, and did not cause Harry G. Hunke to leave his wife, and did not cause him to lose his affection for her, then you will bring in a verdict of no cause of action, so far as she is concerned. If you find that Edward Hunke caused the alienation of his son's love from the plaintiff and caused the son to abandon his wife,  
20 then you can find a verdict against Edward Hunke, and if, after considering all the evidence, you find that Catherine Hunke took no part in the alienation, and did not cause Harry to leave his wife, she would be entitled to a verdict of no cause of action, so far as she is concerned.

In other words, you can find a verdict against both of these defendants, if you find that they caused this alienation of affection and desertion of Harry G. Hunke, or, if you find only one of  
30 them caused it and the other did nothing to warrant the charge that he or she caused it, then your verdict must be against the one who caused the desertion by Harry and his loss of affection for his wife, and no cause of action against the other. In that connection they would not be joined in the very same act. If they both caused it, by acts done separately, then both defendants are liable the same as though they did it jointly, but  
40 there must be positive evidence of wrong doing on their part or on the part of either of them, before

*Charge to the Jury.*

a verdict can be rendered. You can not guess that the desertion must have been caused by the conduct of these defendants or the conduct between them. That must be established by the evidence. The fact that Harry G. Hunke left his wife and child without means of support will not entitle the plaintiff to a verdict against these defendants, or either of them. If the plaintiff has failed to establish by preponderance of evidence, that the defendants, or one of them, by wilful conduct, caused Harry G. Hunke to lose his affection for his wife, and to leave her, then the plaintiff is not entitled to a verdict, but if you find from this evidence, that the defendants, or one of them, alienated the affection of their son from his wife and caused him to leave her, then she is entitled to a verdict at your hands, and you then have to decide the amount of your verdict, for a verdict in this case must be for money damages.

Now, this action is not brought to recover damages for the child. You have nothing whatever to do in this case with any loss the child may have suffered by reason of Harry G. Hunke's desertion of his wife and child. This action is brought simply by the wife, and you, in considering your verdict, if you find there can be a verdict in favor of the wife, can only consider her damages in this case, and you cannot include any damages which you may consider the child lost by reason of the father's desertion.

If you find that there can be a recovery, she is entitled to recover compensation for the loss of her husband's society, affection, and consortium, for the wrong and injury done to her feelings, for the disgrace and humiliation brought upon her,

*Charge to the Jury.*

but nothing can be considered by you by way of damages which are not the probable consequences of these defendants' wrongful acts, and the plaintiff may also recover, if entitled to recover at all, for the loss of support of her husband. Now, 10 when you come to consider that question, you must consider what he was earning; whether that would be continued in the future; the character of the man he was; whether, in your opinion, he would have continued to support her in the way and manner that he had been. She is entitled to be compensated for the support of her husband that left her, and you must take all these facts into consideration in arriving at that. You may, 20 however, in determining the amount of damages, consider mitigation in the conduct of the plaintiff, that tends to show that she held his affections in a light state, so lessening the affection of the husband for her, but such conduct on the part of the plaintiff, if there was such conduct, is no justification for the defendants' wrongful doing, if you find there was wrongful doing by these defendants, or either of them, and it is no defense to this 30 action, but should only be considered by you in determining the question of damages.

If the husband did not hold his wife's love and affections in as great esteem as he would otherwise do, because of wrongful conduct of his wife, of course, it would mitigate the damages you should award her.

This is not an action to punish the husband for wrong doing on his part. He is not a party to this suit, at all, but it is against these two defendants, Edward and Catherine Hunke, for 40 alleged wrongful acts and conduct on their part,

*Charge to the Jury.*

which alienated the affections of their son from his wife and caused him to leave her.

If the plaintiff has failed to establish her case by a preponderance of evidence, you do not have to consider damages, because she is not entitled to a verdict. If she has established a case against these defendants, or against either of them, by preponderance of evidence, then she can recover against them both, if they are both liable, or against the one you find liable. 10

This case has taken some considerable time to try, gentlemen. It is an important case for the defendants and it is an important case for the plaintiff. You have to decide it from the evidence which you have heard. Take all the evidence and consider it carefully, applying those rules of law which I have laid down for your guidance, and when you have arrived at a verdict in that way and manner, whatever it may be, it will be the proper verdict. 20

Mr. Fallon: I want to take exception to the Court's charge in which the Court says that these parents may be warranted in advising their son, Harry G. Hunke, in good faith. My reason for that is that there is nothing in the pleadings relating to it. There is nothing in the pleadings or testimony as to mitigation of damages. If they are entitled to that consideration, they must rely upon it in their pleadings. 30

The Court: You may have an exception.

Mr. Fallon: Another exception: That portion of your Honor's charge, in which you say that if Catherine Hunke alienated the affections and so forth, the jury can find against her, alone; if the defendant Edward Hunke, alienated the affections and so forth, the jury can find against him, alone. 40

*Charge to the Jury.*

My reason for this exception is that my view of the law is that the husband is responsible for the torts of his wife, and if she committed that tort, I think he is responsible.

The Court: You may have your exception.

10 Mr. Fallon: I want to except to that part of your Honor's charge in which you referred to acts committed separately and distinctly and so forth.

I want to take exception to that part of the charge in which your Honor referred to the defendants alienating and counselling the son to leave his wife.

I submit that that was coupled up in a way that might be objectionable.

20 As to your Honor saying that the jury may find against one or both—my impression is that it should be against both.

I want to request an exception to your Honor's refusal to charge all my requests to charge in the manner in which they were submitted.

(The jury was returned from the jury room for further instructions by the Court.)

30 The Court: There are some matters, gentlemen of the jury, that counsel thinks I have not made plain. I am perfectly willing to call some of these matters to your attention.

The first two requests to charge by the plaintiff, which they think are not actually covered by the charge are:

40 If you find from the evidence in this case that the defendants acted in concert to bring about a separation between Harry and his wife, the plaintiff in this suit, then they are jointly liable to the plaintiff.

If you so determine, you will find for the plain-

*Charge to the Jury.*

tiff, if each of them did not participate in the acts of the other.

Another request is: It is for the jury to determine whether the defendants acted from an improper motive, if the jury determines that the evidence submitted reasonably tends to show such motive. 10

That is a matter for you to determine. I so charge.

The other matter my attention is called to is: It is not necessary for you to find that Harry G. Hunke lost his affection for his wife and left his wife, but if you find that he lost the affection of his wife through wrongful conduct of these defendants, or if you find that either of them are the person or persons who caused this alienation of affections—that is, if you find that he did lose the affection of his wife, and was induced to leave his wife—desert her—by reason of the wrongful conduct of these defendants, or either of them, then the plaintiff would be entitled to a verdict against these defendants or against the one of these defendants which caused the desertion. In other words, you do not have to find loss of love and affection and desertion caused by them both in order to find a verdict for the plaintiff. 20 30

Mr. Fallon: I take an exception to your Honor's refusal to charge requests 1 and 4 in my requests to charge and also your refusal to charge the requests as made by the plaintiff in the original papers filed with your Honor.

The Court: I have charged. You may have your exception. 40

## REQUESTS TO CHARGE FOR PLAINTIFF:

10 In an action for alienation of the affection of a husband the wife may recover for the loss of her husband's society and of his support and maintenance, and to establish the value of these items she may show his position in life, occupation, etc. Having shown these things, she may recover the cost of her separate maintenance; and this without deducting the amount she may have made by her own services after the separation. She may also recover for her mental anguish, mortification and wounded feelings. (Sedgwick on Damages—9th edition, vol. 2, page 909, sec. 480-b.)

20 The wife, in such a case, may also recover for her mental agony, lacerated feelings, wounded sensibilities, and the like. (13 R.C.L., page 1481, sec. 531, "Damages.")

30 The marriage state is not one entered into for the purpose of labor and support alone. Considerations of the highest character, as the comfort and happiness of the parties to the marriage contract, and the welfare of their children, give to each the right to the affection, companionship and society of the other, and whoever wrongfully deprives either of that right may be held responsible. (Price v. Price (Iowa), 24 L.R.A. 150.)

The alienation of the affection of the husband of a married woman is a tort committed against her, to recover damages for which, under the law, she may maintain an action in her own name (Sims v. Sims, 79 N.J.L. 577).

40 Where a loss of *consortium* between husband and wife is caused by wilfull conduct of a third party, there is a legal injury, for which damages are recoverable, irrespective of prior existence of

*Requests to Charge.*

actual affection between the spouses. If a husband and wife be living separately, there is always a possibility of their coming together, which the law encourages, and an actionable wrong is committed by unlawful interference preventing reunion (*Dey v. Dey*, 94 N.J.L. 342; concurred in by Court of Errors and Appeals, in *Davenport v. Holden*, 95 N.J.L. 197, 200). 10

The *gist* of the action of enticing and alienation is the loss of *consortium*.

The action may be brought against any person who may be liable in tort (21 Cyc. 1619).

The wife may recover as damages the value of her support and loss of *consortium*. (21 Cyc. 1622). The term "*consortium*" means the society, companionship, conjugal affection, fellowship and assistance of the wife (or husband, as the case may be). (Vol. 1, "Words and Phrases"—2nd series, p. 909.) 20

The right of "*consortium*" is a right growing out of the marital relation, which the husband and wife have, respectively, to enjoy the society, companionship and affection of each other in their life together (Vol. 1, "Words and Phrases", 2nd series, p. 909). 30

If the defendants acted maliciously and unjustifiably in bringing about the separation of the plaintiff and her husband, they are liable to the plaintiff, as if they were strangers (46 L.R.A., N.S., p. 469). Last two notes under the heading "Parents" which begins on p. 467.

Direct evidence of the defendants' wrongful motives is not required, but may be inferred from their conduct (13 R.C.L., p. 1474, sec. 525). 40

PLAINTIFF'S ADDITIONAL REQUESTS TO  
CHARGE JURY:

1. It is the general rule of law that a want of affection, in fact, by the deserting spouse for the plaintiff is not a defense in bar to the maintenance of the plaintiff's action. Therefore, even though you may determine, from the evidence, that the desertion of the plaintiff by her husband was due to a want of affection on his part towards his wife, such is not a defense in bar to the maintenance of the plaintiff's action against the defendants.

2. Parents may not, with hostile, wicked or malicious intent, break up marital relations between their son and his wife, simply because they are displeased with the marriage, or because it is against their will or because they wish the marriage relation to continue no longer.

3. If you find from the evidence in this case that the defendants acted in concert to bring about a separation between their son Harry and his wife, the plaintiff in this suit, they are jointly liable to the plaintiff, if you determine to find a verdict for the plaintiff, although each of them—that is, each of the defendants—did not participate in all of the acts of the other.

4. Direct evidence of the defendant's wrongful motives is not required by law, but may be inferred, as in other cases where motive is in issue, from conduct.

5. It is for the jury to determine whether the defendants acted from an improper motive, if the jury determine that the evidence submitted reasonably tends to show such motive.

## DEFENDANTS' REQUESTS TO CHARGE:

(1) Counsel for the defendants requested the court to non-suit the plaintiffs. The fact that the Court refused this motion is not to be taken by the jury in any way prejudicial to the defendants and the jury are not to consider because the Court refused the motion that the Court thinks the plaintiffs are entitled to recover. It simply means that the facts are for the jury and not for the Court to pass upon and does not indicate the Court's opinion in any manner whatever. 10

(2) The rights and corresponding duties of a parent are very great; very much greater than those of a stranger and much stronger evidence is required to maintain an action against a parent. It is legal and proper for a parent to give to his son such advice and even to bring persuasion and inducement to bear upon his son as he fairly and honestly considers to be called for by his best interest and the plaintiff in this case is not entitled to damages unless the jury is satisfied by the greater weight of the evidence that the parents were actuated by malice and ill will and not by a proper mental regard for the welfare and happiness of the child. 20 30

(3) A father's house is always open to his child and whether they be married or unmarried, it is still to them a refuge from the evil and a consolation in distress. The plaintiff in this action is not entitled to recover unless the jury is satisfied that the parents detained the boy against his will or that the parents actually enticed him away from his wife from improper motives. 40

*Requests to Charge.*

(4) Bad or unworthy motives will not be presumed by the law. They must be positively shown or necessarily deduced from the facts and circumstances. If the husband and wife are not living together because the husband was interested in other women or was unable or refused to support his wife, and because of gambling or other reasons, then this plaintiff can not recover.

10

(5) It must appear to the satisfaction of the jury by the greater weight of the evidence that the defendants in this action wrongfully persuaded and enticed the boy from his wife. If this doesn't appear, then the plaintiff can not recover.

20

ADDITIONAL DEFENDANTS' REQUEST TO  
CHARGE:

Plaintiff has in his summing up, made reference to the status of the child of the Plaintiff in this case. I charge you that you have nothing whatever to do in your deliberation with this and the only thing you can consider is the issues which are raised in the complaint in this case.

30

40

**Plaintiff's Exhibit 1.**

Jan. 11, 1923

Dear Lillian:—

I enclose herewith a check for \$30.00 for your maintenance.

10

Harry.

---

HARRY  
EDWARD HUNKE  
MARRIAGE  
126 - 34TH STREET  
WOODCLIFF, N. J.

Postmarked  
West New York, N. J.  
Jan. 12, 1923  
6:30 P. M.

20

Mrs. H. G. Hunke,  
c/o Chas. H. Fraser,  
51 Second St.,  
Weehawken, N. J.

30

40

**Plaintiff's Exhibit 2, for  
Identification.**

Jan. 20, 1923

Dear Lillian:—

10

I enclose herewith a check for \$15.00 for week ending Jan. 20, 1923.

Harry.

20

**HARRY**  
**EDWARD HUNKE**  
~~REDACTED~~  
126 - 34TH STREET  
WOODCLIFF, N. J.

Postmarked  
West New York, N. J.  
Jan. 21, 1923  
6 P. M.

Mrs. H. G. Hunke,

c/o Chas. H. Fraser,

51 Second St.,

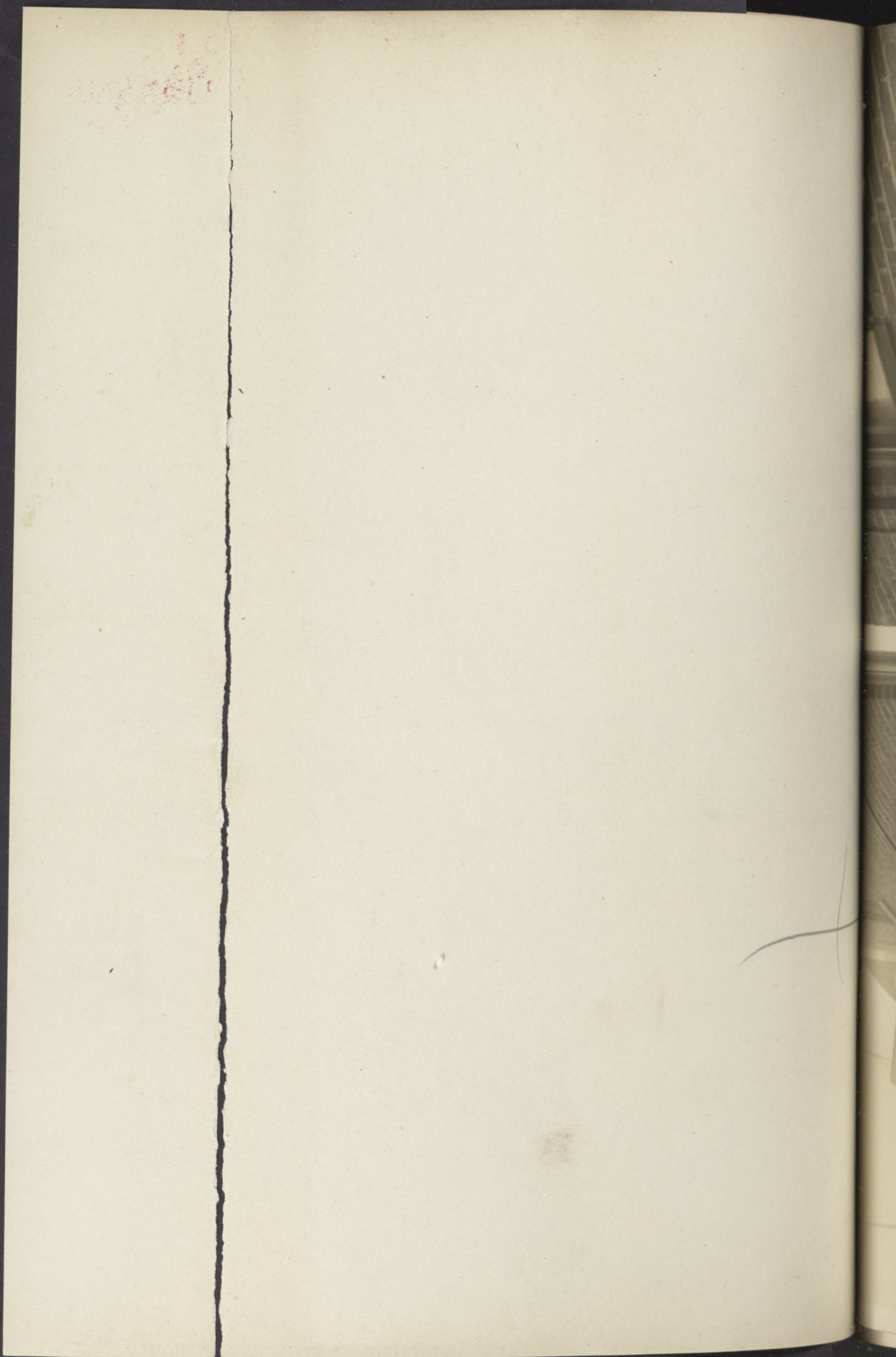
Weehawken, N. J.

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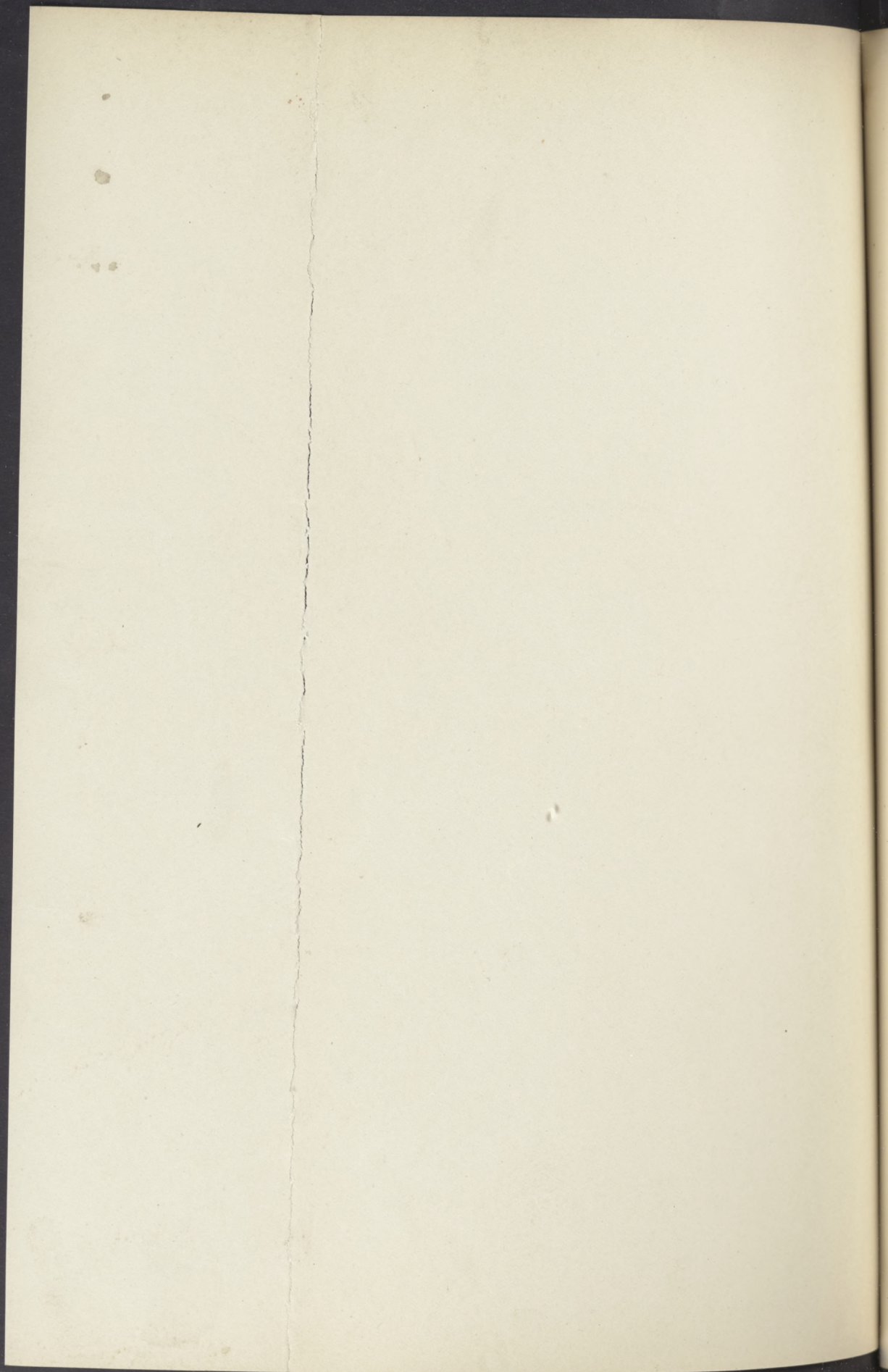


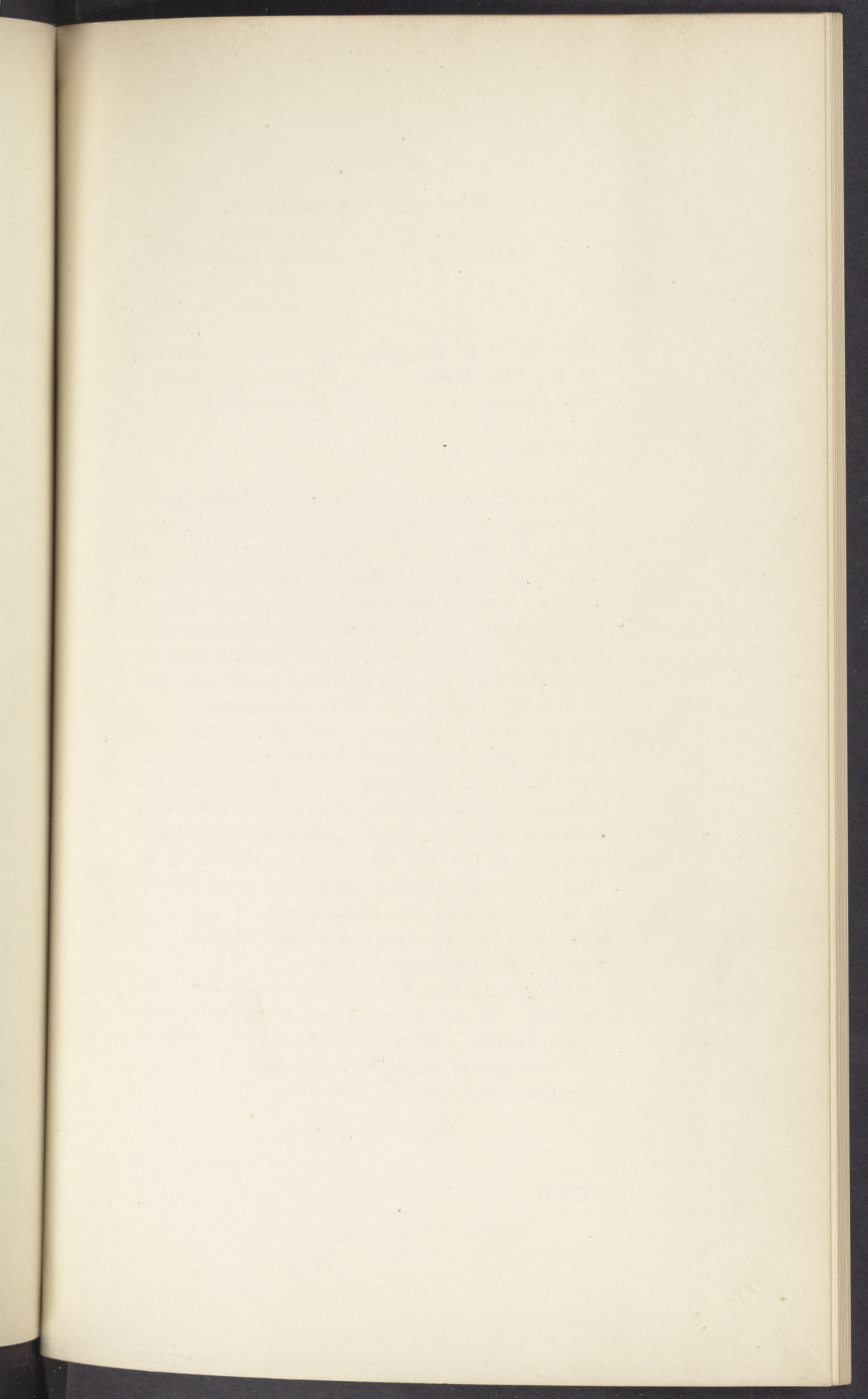
1888

1888

215







**Plaintiff's Exhibit 6.**

(Letterhead of FALLON &amp; FALLON.)

October 19, 1926

	Mr. William H. Kennedy,	Mr. William Kennedy,
10	41 No. 12th Street,	37 East 28th Street,
	East Orange, N. J.	New York City.

Dear Sir:—

20 The civil suit of Mrs. Lillian G. Hunke against her father in law and mother in law (parents of Harry G. Hunke, her husband), is likely to be called for trial some day the latter part of this week or perhaps next week or the week after. I am arranging for the subpoena of witnesses therefor, and I want to arrange if possible that the witnesses need not attend court before they will be actually required to be in attendance.

30 Mrs. Hunke informed our Mr. Fallon, Sr. shortly after having had a talk with you quite some time ago that you stated to her that her husband's mother had called to see you and talked with you about her son's indebtedness to you and assured you her son would repay everything he owed you "but that you should not make known to her son's wife the whereabouts of her son". It is to prove this latter statement that we will require your testimony.

40 Kindly advise us whether you recall said conversation. If not, perhaps you could meet Mrs. Lillian Hunke and she may be able to refresh your recollection as to the full import of the conversation which she had with you.

Very truly yours,

FALLON &amp; FALLON.

JJF:LB

**Plaintiff's Exhibit 7.**

(Letterhead of FALLON &amp; FALLON.)

August 23, 1923.

Edward Hollander, Esq., 10  
 8 Bergenline Avenue,  
 Town of Union, N. J.

Dear Sir:

I am waiting to hear further from you in the  
 Hunke matter of which you phoned to me several  
 days ago. Will you let me hear definitely from  
 you by Monday next as to whether Edward Hunke  
 will contribute towards the support of his grand- 20  
 child, the son of Harry G. Hunke, and if so, how  
 much he would be willing to contribute thereto.

Very truly yours,

JOHN J. FALLON.

JJF/CR

30

40

**Plaintiff's Exhibit 8.**

(Letterhead of EDWARD HOLLANDER.)

August 24, 1923.

10 Messrs. Fallon & Fallon,  
Hudson Trust Bldg.,  
Hoboken, N. J.

Dear Sirs:

In reply to yours of the 23rd inst., I wish to  
say that I have advised Mr. Hunke to make some  
contribution towards the support of his grand-  
child, and he is willing to pay the sum of Three  
20 (\$3.) Dollars per week.

You can advise me if that is agreeable to you.

Very truly yours,

E. HOLLANDER.

EH-HK

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**Plaintiff's Exhibit 9.**

August 28, 1923.

Edward Hollander, Esq.,  
8 Bergenline Avenue,  
Town of Union, N. J.

10

Dear Sir:

Mrs. Hunke was at our office this evening and we talked with her about the proposal which you submitted to us in behalf of Mr. Edward Hunke, whereby he offered to pay to her the sum of \$3.00 per week for the support of her son, who is not yet three years of age. Mrs. Hunke says that her father-in-law ought to appreciate that the sum of \$3.00 per week will be insufficient for the support and maintenance of said child. She says that the wearing-apparel she is obliged to purchase for the child costs so much these days that the sum of \$3.00 per week would not suffice to purchase wearing-apparel and also the child's board. She suggests that if Mr. Hunke will agree to pay her the sum of \$5.00 per week she will be content therewith. Will you let us hear from you again before Friday of this week?

20

30

Very truly yours,

FALLON &amp; FALLON.

JJF/CR-

40

**Plaintiff's Exhibit 10.**

(Letterhead of EDWARD HOLLANDER.)

September 13, 1923.

10 Messrs. Fallon & Fallon,  
51 Newark St.,  
Hoboken, N. J.

Dear Sirs: re- Hunke.

Enclosed you will please find check for \$6. in payment of last week's and this week's contribution from Mr. Edward Hunke, for the support of his grandchild.

20 Of course, this payment is a voluntary contribution and is not to be deemed as an admission of liability, and is made without prejudice.

Very truly yours,

E. HOLLANDER.

EH-HK  
encl.

30

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**Plaintiff's Exhibit 11.**

September 17, 1923.

Edward Hollander, Esq.,  
#6 Bergenline Avenue,  
Town of Union, N. J.

10

Dear Sir:

Upon my return to my office to-day after a week's vacation, your letter of September 13 in re Hunke came to my office. I find enclosed therewith a check for \$6.00 made payable to the order of Warren Hunke. Such check you can appreciate would be of no account to Mrs. Lillian Hunke. Will you kindly have your client make a new check payable to the order of Lillian Hunke. I am returning enclosed herewith the aforesaid check made payable to the order of Warren Hunke. I note the statement in your letter that payment of money by Edward Hunke is without prejudice.

20

Very truly yours,

30

FALLON &amp; FALLON.

JJF/TC

40

**Plaintiff's Exhibit 12.**

September 21, 1923.

Edward Hollander, Esq.,  
#8 Bergenline Avenue,  
10 Town of Union, N. J.

Dear Sir:

20 Mrs. Lillian Hunke phoned me at 6 o'clock to-  
day that she received through the mail from your  
client Edward Hunke two checks aggregating the  
sum of \$9.00—drawn to the order of Warren  
Hunke, and that Mr. Hunke in a letter which  
accompanied said checks stated that said checks  
might be endorsed by her "Warren Hunke by  
Lillian Hunke mother" and that such would be  
satisfactory to him, and the checks would be  
honored by payment with such endorsement ap-  
pearing thereon. Mrs. Hunke at my direction is  
mailing said checks to my office and upon receipt  
thereof I will mail same to you so that you will  
return them to Mr. Hunke. There ought to be no  
quibbling upon the part of Mr. Hunke as to  
30 whom his check should be made payable to. He  
knows very well that the moneys in question are  
to be paid to Mrs. Hunke the mother of Warren  
Hunke towards the latter's support and mainte-  
nance. Why in view thereof should not Mr.  
Hunke make the checks payable to Mrs. Lillian  
Hunke? He may if he so desires endorse upon  
the back of the check a statement that the moneys  
represented thereby are to be applied toward the  
40 support and maintenance of Warren Hunke or he  
may by letter accompanying the check state the  
purpose thereof.

*Plaintiff's Exhibits.*

Kindly have Mr. Hunke make and forward to me his check for the amount of moneys now due and payable by him as per agreement to the order of Mrs. Lillian Hunke and I will forward such check to Mrs. Hunke so that she may cash and use same for her son Warren. 10

Very truly yours,

F. & F.

JJF/TC

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**Plaintiff's Exhibit 13.**

(Letterhead of FALLON & FALLON.) 20

September 22, 1923.

Edward Hollander, Esq.,  
8 Bergenline Avenue,  
Town of Union, N. J.

Dear Sir:

As per my letter to you of yesterday in re Hunke I am sending to you enclosed herewith check No. 2327 bearing date September 12, 1923, drawn by Edward Hunke to the order of Warren Hunke on the First National Bank of Guttenberg, N. J., for \$6.00 and check No. 2328 dated September 19, 1923, drawn by Edward Hunke to the order of Warren Hunke on the First National Bank of Guttenberg, N. J., for \$3.00. 30

Have Mr. Edward Hunke send to me in lieu thereof checks payable to the order of Lillian Hunke.

Very truly yours,

40

M. J. BREEN.

MJB/CR

**Plaintiff's Exhibit 14.**

January 9, 1924.

Edward Hollander, Counsellor-at-Law,  
8 Bergenline Avenue,  
10 Town of Union, N. J.

Dear Mr. Hollander:

I have written to you several times and I have  
also 'phoned to you, advising you that Edward  
Hunke is in arrears in his payments to Mrs. Lil-  
lian G. Hunke towards the support of Mr.  
Hunke's grandchild. I believe Mr. Hunke is now  
20 in arrears to the extent of eight or nine weeks  
at \$3.00 per week. As I stated to you over the  
'phone I trust I may not be obliged to proceed  
against Mr. Hunke under the 1912 poor law, for  
the reason that I would be taking upon myself  
work for which I cannot expect to be compen-  
sated, for the reason that Mrs. Hunke is without  
means to compensate me. Unless, however, Mr.  
Hunke will immediately make payment of the  
amount of the aforesaid arrears, and make prompt  
30 weekly payment hereafter of the sum of \$3.00 per  
week to Mrs. Hunke, the payment of which he  
voluntarily assumed, I will institute the proceed-  
ings under the aforesaid poor law necessary to  
*require* Mr. Hunke to make payment or moneys  
towards the support of his grandchild, and if  
such proceeding be taken I feel quite sure that  
Mr. Hunke will not get off with so small an allow-  
40 ance as \$3.00 per week, as he knows very well  
that \$3.00 per week, in these times, is insufficient  
to meet the expense necessary to adequately sup-

*Plaintiff's Exhibits.*

port and maintain his grandchild. I shall expect a definite reply from you not later than Saturday of this week, and I shall also expect that Mr. Hunke make payment within said time of the aforesaid arrears.

10

Very truly yours,

FALLON & FALLON.

JJF/LB

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**Plaintiff's Exhibit 15.**

20

February 6, 1924.

Edward Hollander, Esquire,  
8 Bergenline Avenue,  
Town of Union, N. J.

Dear Mr. Hollander:

What is the reason that you have not let me hear definitely from you in the Hunke matter? I informed you that I was gratuitously rendering service to Mrs. Hunke in said matter because of my acquaintance and friendship of many years with her father, Mr. Fraser. If Mr. Hunke, Sr. will not continue the payment of \$3.00 per week I will be constrained to institute proceedings against him to enforce an adequate weekly payment to be made by him for support of his grandchild. Furthermore, as I stated to you over the phone, there is an indictment for desertion pend-

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*Plaintiff's Exhibits.*

ing against Harry G. Hunke. I have not made any particular effort to locate the whereabouts of the defendant with a view of having him extradited, but you can readily appreciate that if some provision for the support and maintenance of his child is not made by Mr. Hunke, Sr. (who undoubtedly can obtain repayment thereof from his son Harry G. Hunke), I will be further constrained to exercise my utmost endeavor to cause the apprehension and extradition of Harry G. Hunke. If such is effected, Mr. Hunke, Sr. may very well appreciate what the result will be to his son, in view of his son's having departed the jurisdiction of the court after he had been held in \$1,000. bail by Judge Lazarus in the custody of his counsel William E. Burke. You can appreciate that the court will have little sympathy for him in imposing sentence upon him.

Very truly yours,

FALLON & FALLON.

JJF/LB

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40

**Plaintiff's Exhibit 16.**

(Letterhead of EDWARD HOLLANDER.)

February 7, 1924.

Messrs. Fallon & Fallon,  
Hudson Trust Bldg.,  
Hoboken, N. J.

10

Dear Mr. Fallon:

I certainly do appreciate the position you are in in respect to this matter. I have laid the proposition before Mr. Hunke and he took the matter under advisement. He told me that he would let me know within a few days from the day that he was at my office of his intentions in respect to the continuance in payments to his daughter-in-law.

20

The reason for my not writing you is because I did not receive any instructions from Mr. Hunke. I am writing him at this time, advising him of the receipt of your letter.

30

Very truly yours,

E. HOLLANDER.

EH-HK

40

**Plaintiff's Exhibit 17.**

May 6th, 1924.

Edward Hollander, Esq.,  
 8 Bergenline Avenue,  
 10 Town of Union, N. J.

Dear Mr. Hollander:

Mrs. Lillian Hunke called to see me again today about requiring her father-in-law Edward Hunke to contribute towards the support and maintenance of his Grand-child Warren Hunke the son of Harry G. and Lillian Hunke. Mr. Hunke, as you know, contributed the sum of \$3.00 per week for a short time, when he discontinued same. I am quite sure that Mr. Hunke would not like to incur the undue notriety which would result from a litigation that I would be obliged to institute against him in his daughter-in-law's behalf for the benefit of his aforesaid Grand-child, if, he Edward Hunke shall not contribute towards the support and maintenance of said child, and which he is required to do under Section 15 of Chapter 196 of the Laws of 1911. Thus far Mrs. Hunke's father 20 Charles H. Fraser has contributed towards the support and maintenance of said Grand-child. Will you kindly take the matter up with your client Edward Hunke and advise me definitely not later than Monday next whether he will contribute towards the support of his aforesaid Grand-child, at least the sum of \$3.00 per week beginning next week. 30

40 Very truly yours,

FALLON & FALLON.

JJF/CR

**Plaintiff's Exhibit 18.**

September 6, 1923.

Edward Hollander, Counsellor-at-Law,  
8 Bergenline Avenue,  
Town of Union, N. J.

10

Dear Sir:

Mrs. Hunke has requested me to write to you to say that owing to her pecuniary circumstances, she feels obliged, in the interests of her son, to accept the offer of your client, Edward Hunke, whereby he will make payment to her of the sum of \$3.00 per week towards the support and maintenance of her son. She says that Mr. Hunke ought to know very well that the child cannot be properly cared for by such sum. The statement which you made to me over the 'phone that Mr. Hunke knows a place where he could have the child boarded for \$3.00 a week is unworthy of consideration. Mr. Hunke knows very well that if the child were farmed out it would not receive the same care and attention as it would from its mother. The offer of \$3.00 will be accepted without prejudice to Mrs. Hunke's right to apply in the future for an increased sum if she feels that she should do so. I trust, under the circumstances, that you will have Mr. Hunke remit to Mrs. Lillian G. Hunke, No. 51 Second Street, Weehawken, N. J., the sum of \$6.00, which is now due on his offer; \$3.00 for last week and \$3.00 for the present week. After Mr. Hunke makes payment of the sum of \$6.00 which is now due on his offer, Mrs. Hunke will expect him to remit to her the

20

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*Plaintiff's Exhibits.*

sum of \$3.00 on Monday next, and \$3.00 on each Monday thereafter. I would thank you to confirm the understanding by letter tomorrow.

Very truly yours,

10

FALLON &amp; FALLON.

JJF/LB

**Plaintiff's Exhibit 19.**

(Letterhead of EDWARD HOLLANDER.)

20

September 24, 1923.

Mr. Edward Hunke,  
First National Bank of Guttenberg, N. J.

Dear Mr. Hunke:

Enclosed herewith you will please find the two checks which you had sent to your daughter-in-law together with a letter from Mr. Fallon.

30

I would suggest that you send the checks made payable to Lillian Hunke to Mr. Fallon. You can note on the check the purpose thereof, but payee's name should be Lillian Hunke.

Your compliance with this request will avoid further correspondence with Mr. Fallon.

Very truly yours,

40

E. HOLLANDER.

EH-HK

**Plaintiff's Exhibit 20.**

September 18, 1923.

Mr. Edward Hunke,  
First National Bank of Guttenberg, N. J.

10

Dear Sir:

Enclosed herewith you will please find letter that I received from Mr. Fallon together with your check. I would suggest that you make your check to Mrs. Hunke so that she can cash it, and I would suggest that you mail it direct to her.

Very truly yours,

20

E. HOLLANDER.

EH-HK

encl.

**Plaintiff's Exhibit 21.**

30

(Letterhead of FALLON &amp; FALLON.)

September 17, 1923.

Edward Hollander, Esq.  
#8 Bergenline Avenue,  
Town of Union, N. J.

Dear Sir:

40

Upon my return to my office to-day after a week's vacation, your letter of September 13th

*Plaintiff's Exhibits.*

10 in re Hunke came to my notice. I find enclosed therewith a check for \$6.00 made payable to the order of Warren Hunke. Such check you can appreciate would be of no account to Mrs. Lillian Hunke. Will you kindly have your client make a new check payable to the order of Lillian Hunke. I am returning enclosed herewith the aforesaid check made payable to the order of Warren Hunke. I note the statement in your letter that payment of money by Edward Hunke is without prejudice.

Very truly yours,

JOHN J. FALLON.

20 JJF/TC

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**Plaintiff's Exhibit 22.**

(Letterhead of FALLON & FALLON.)

30

September 21, 1923.

Edward Hollander, Esq.  
# 8 Bergenline Avenue,  
Town of Union, N. J.

Dear Sir:

40 Mrs. Lillian Hunke phoned me at 6 o'clock today that she received through the mail from your client Edward Hunke two checks aggregating the sum of \$9.00—drawn to the order of Warren Hunke and that Mr. Hunke in a letter which ac-

*Plaintiff's Exhibits.*

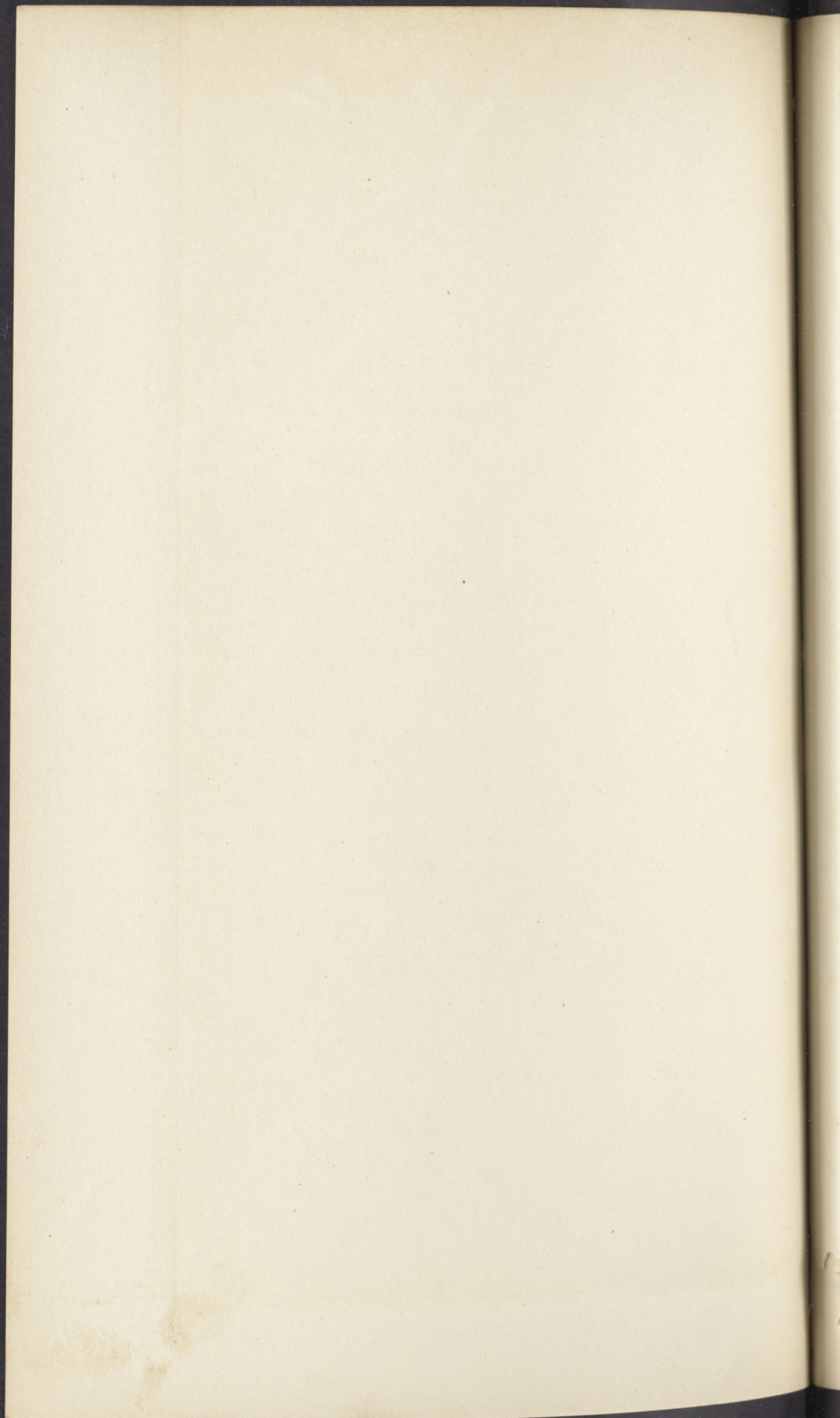
companied said checks stated that said checks  
 might be endorsed by her "Warren Hunke by  
 Lillian Hunke mother" and that such would be  
 satisfactory to him, and the checks would be hon-  
 ored by payment with such endorsement appear- 10  
 ing thereon. Mrs. Hunke at my direction is mail-  
 ing said checks to my office and upon receipt  
 thereof I will mail same to you so that you will  
 return them to Mr. Hunke. There ought to be no  
 quibbling upon the part of Mr. Hunke as to whom  
 his check should be made payable to. He knows  
 very well that the moneys in question are to be  
 paid to Mrs. Hunke the mother of Warren Hunke  
 towards the latter's support and maintenance.  
 Why in view thereof should not Mr. Hunke make 20  
 the checks payable to Mrs. Lillian Hunke? He  
 may if he so desires endorse upon the back of the  
 check a statement that the moneys represented  
 thereby are to be applied toward the support and  
 maintenance of Warren Hunke or he may by letter  
 accompanying the check state the purpose thereof.

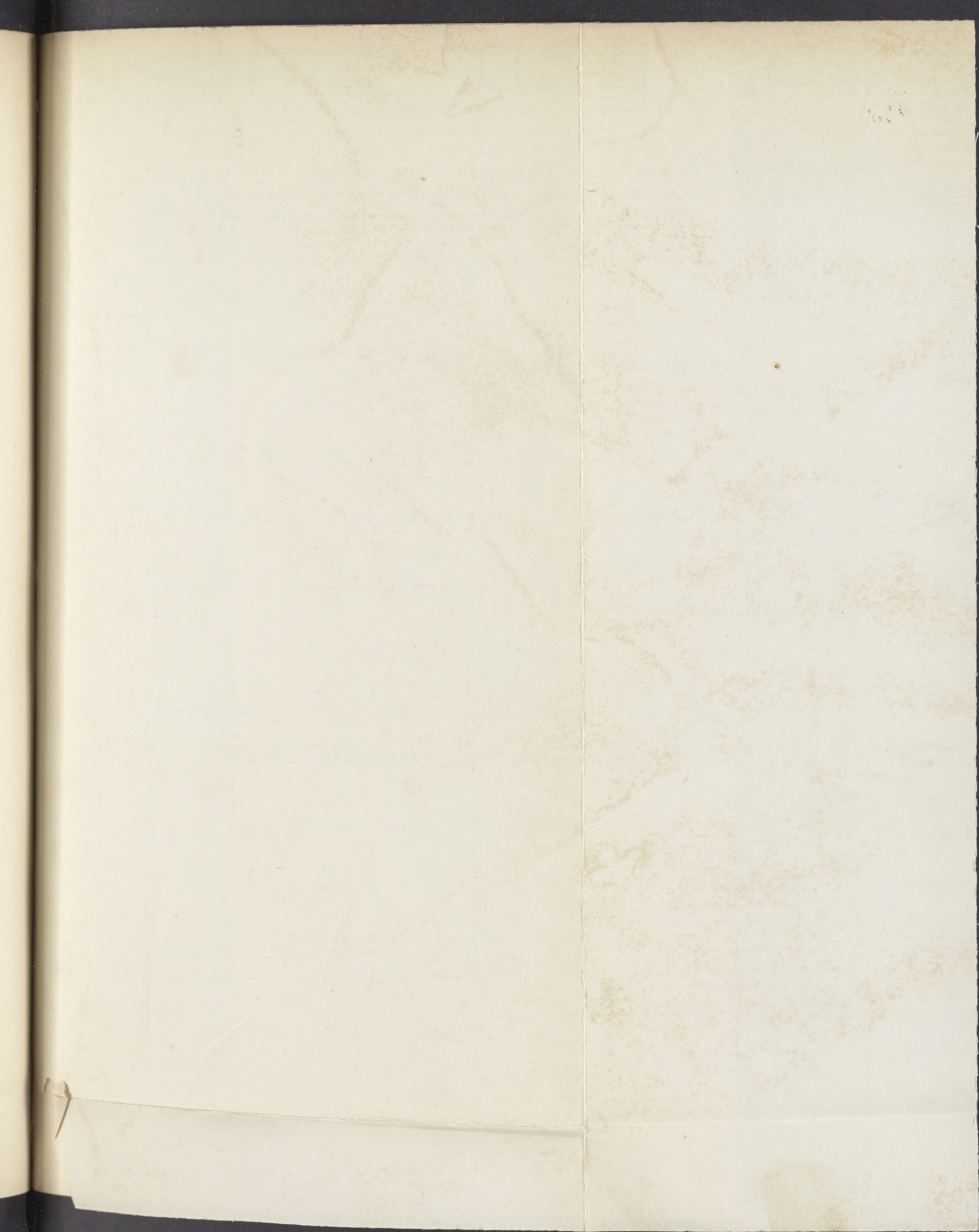
Kindly have Mr. Hunke make and forward to  
 me his check for the amount of moneys now due  
 and payable by him as per agreement to the order  
 of Mrs. Lillian Hunke and I will forward such 30  
 check to Mrs. Hunke so that she may cash and use  
 same for her son Warren.

Very truly yours,

JOHN J. FALLON.

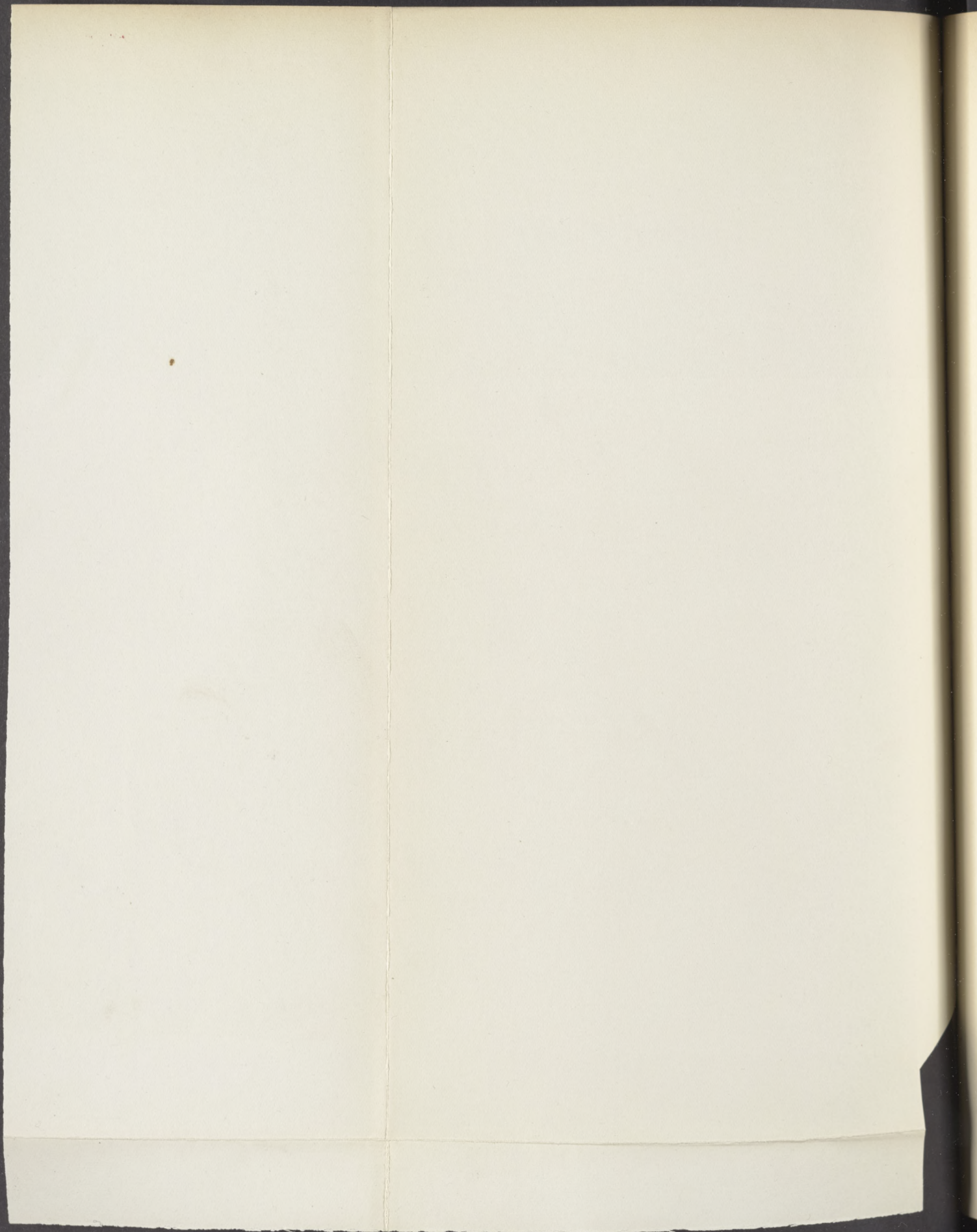
JJF/TC













**Plaintiff's Exhibit 25.**

Sep. 19—23

The following endorsement will be accepted on these checks:

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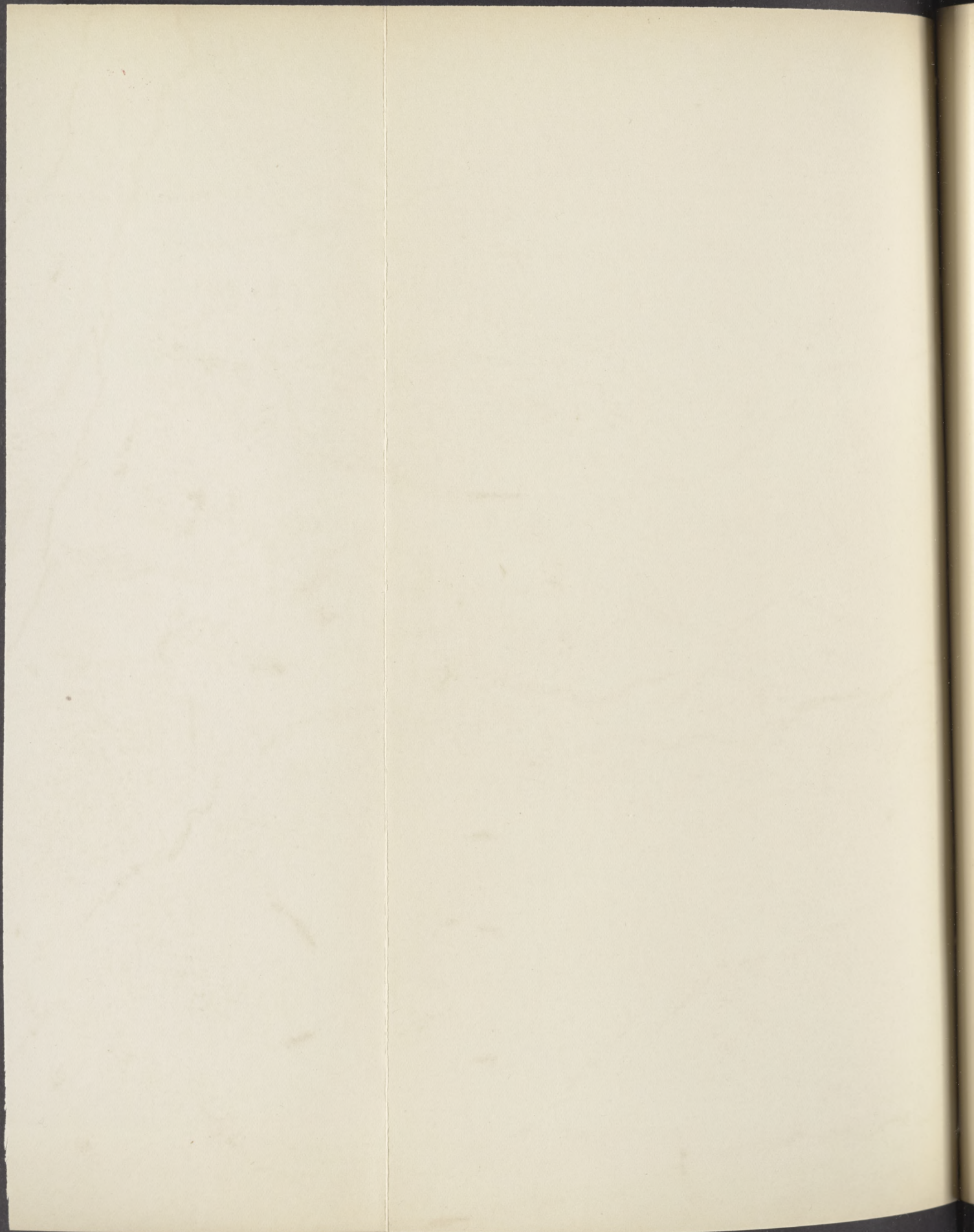
“Warren Hunke  
by Lillian Hunke mother”

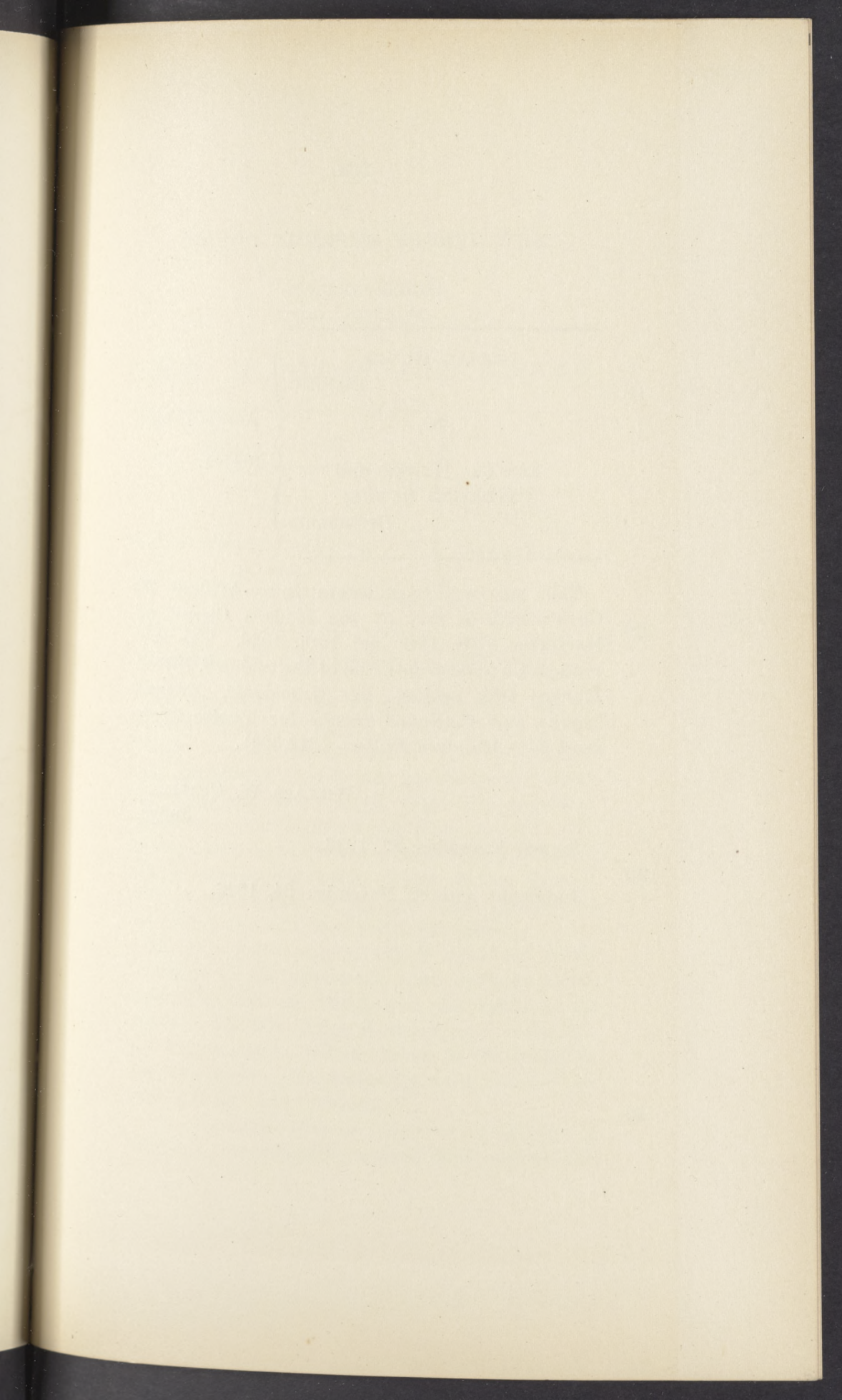
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NEW JERSEY SUPREME COURT,  
HUDSON COUNTY.

10	<p style="text-align: center;">LILLIAN HUNKE, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">EDWARD HUNKE and CATHERINE HUNKE, Defendants.</p>	<p>Action at Law.</p> <p>Postea.</p>
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20 This case was tried before Judge Willard W. Cutler with a jury at the Hudson Circuit on November 17th, 18th and 19th, 1926. The jury rendered a verdict in favor of the plaintiff, Lillian Hunke and against the defendants, Edward Hunke and Catherine Hunke for Twelve Thousand Five Hundred Dollars (\$12,500).

WILLARD W. CUTLER,  
Judge.

Signed November 22, 1926.

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Judgment entered November 24, 1926.

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NEW JERSEY

Court of Errors and Appeals

<p style="text-align: center;">LILLIAN HUNKE, Plaintiff-Appellee,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">EDWARD HUNKE and CATHERINE HUNKE, Defendants-Appellants.</p>	}	<p>On Appeal from the Supreme Court—Hudson County Circuit.</p>
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**BRIEF FOR PLAINTIFF-APPELLEE.**

The appellants have set out (pp. 2, 3 and 4) thirteen grounds of appeal, but have not argued grounds two and five in their brief. The first and sixth grounds of appeal are argued under Point Ten of the appellants' brief. The third ground of appeal is argued under Point Nine thereof. The fourth, eleventh, twelfth and thirteenth grounds of appeal are argued under Point Seven thereof. The seventh, eighth, ninth and tenth grounds of appeal are argued under Point Six thereof.

The only points argued before this court orally in behalf of the appellants were grounds seven, eight, nine and ten. Seven and nine relate to the denial by the trial judge of defendants' motion for nonsuit, and eight and ten relate to the denial by the trial judge of the motion for a direction of verdict in favor of the defendants.

The appeal is from a judgment of \$12,500 in favor of the plaintiff against both defendants.

Both defendants appeal from such judgment—though the appellants argue particularly in behalf of the defendant *Edward Hunke*.

An examination of the docket of the Supreme Court will evidence that a judgment of \$10,000 was previously entered on the verdict of a jury in favor of the plaintiff and against the defendants by default.

#### As to the Facts.

The pertinent facts as disclosed by the state of the case are as follows:

Plaintiff was married August 6, 1919, to Harry Hunke, son of the defendants. She was nineteen and he twenty-two years of age (p. 16). They resided in New York City until June, 1922, when they moved to 31st Street, Woodcliff, N. J. (p. 17, line 27). The defendants lived in 34th Street, Woodcliff, N. J. (p. 19, line 5). One child was born of the marriage, Warren Hunke, who at the time of the trial was six years of age (p. 16, line 20). Plaintiff and her husband lived very happy while residing in New York (p. 17, line 5 from bottom), and the husband was accustomed to be at home nights (p. 17, line 3 from bottom). A short time after they moved to Woodcliff, plaintiff's husband "changed considerably. He was indifferent" (p. 18, line 2). The plaintiff was not aware of any reason for the change (p. 18, line 5). "He didn't come home at nights; would stay away. When I asked him where he was staying, he would say he was at his parents' home" (p. 18, bottom, and p. 19, top). Defendants' home was three blocks away from where plaintiff and her husband resided (p. 19, line 5). There were no quarrels between plaintiff and her husband (p. 18, line 6). The first rift in the apparently peaceful marital

relations between the plaintiff and her husband occurred on October 12, 1922, while they were visiting the defendants' home, when plaintiff heard the defendant Catherine Hunke say to her son Harry (plaintiff's husband) that she, said defendant,

“thought it a very good idea if we would put our things in storage and both go back to work and in that way be able to save some money quickly and pay the debts which Harry told her he owed” (p. 13, lines 13 to 17).

Plaintiff's husband had absolutely no debts at that time that plaintiff was aware of (p. 19, line 18). The plaintiff remonstrated with said defendant about her gratuitous advice that her son and the plaintiff break up their home, the plaintiff saying:

“Break up our home—nothing like that—I couldn't understand why she suggested anything like that” (p. 19, line 23).

The defendant replied:

“Well, if you do that you will be able to save some money” (p. 19, line 27).

That the defendant Catherine Hunke so stated, or substantially so, is corroborated by the testimony of the defendant Edward Hunke (p. 57, lines 6, 7 and 8), who says his wife suggested that plaintiff and her husband each go to work and put the furniture in the back of her house. On that night (October 12, 1922), before the aforesaid statement was made by the defendant Catherine Hunke to her son Harry, the plaintiff and her husband were dancing together in the defendants' house (p. 19, bottom), and the plaintiff was not aware of any reason why said defendant should have made the aforesaid suggestion to plaintiff's husband. There had been no

talk in the house, in the plaintiff's presence, between plaintiff's husband and said defendant, that led to such statement (p. 20, line 4). About October 20, 1922, in the afternoon, the defendant Catherine Hunke visited the plaintiff's home and said "*that she thought it would be a good idea to put our things in storage; that I could go home to my mother and that Harry could go home to his mother, and that we would save money—my mother could take care of my baby. I said, 'Why should I break up my home? There is no reason for doing that. Harry is making a good salary; we are getting along nicely.' I couldn't see why that should happen. I had a nice home and I didn't want to break it up*" (pp. 20 to 21). The defendant Catherine Hunke again visited the plaintiff's home in the afternoon of October 21, 1922 (p. 21, bottom), accompanied by her daughter Alice (p. 22, line 4), and remained there until 1 o'clock the next morning (p. 22, top), at which time the plaintiff's husband returned to his home. The defendant Catherine Hunke took him aside—in the dining room, but before taking him aside said to the plaintiff, "Don't come with us. Let me talk with him"; and she took him into the dining room and spoke with him a while, and before she left she said, "Harry, we want to take you up to Montclair with us." She looked at the plaintiff and said, "I don't think you and the baby had better come. It is quite cold up there and we have no fire" (p. 22, lines 8 to 19). The Montclair referred to is the summer home of defendants (p. 22, line 21). After the aforesaid occurrence, to wit, on October 22, 1922, plaintiff's husband returned to his home, stayed half an hour, and then went out, and she never saw him in her home thereafter (p. 22, lines 22 to 24). He left his house about 6 o'clock (p. 22, bottom). He did not return home that night (p. 23, line 4).

The following morning, between 7 and 7.30 o'clock, the plaintiff and her sister Florence went over to the defendants' home. Florence rang the bell and the defendant Catherine Hunke came to the window and asked what was wanted. Florence said, "Harry didn't come home all night." The plaintiff didn't say anything. She was crying. The defendant Catherine Hunke said, "Oh, go home and go to bed." Florence called the plaintiff's attention to a topcoat hanging over a chair in the defendants' living room. Plaintiff's sister Florence requested the defendant Catherine Hunke to "open and let us in." The defendant Catherine Hunke replied, "No, I am in my night dress." Plaintiff's sister Florence then said, "We are all women. That is all right. Let us in." Said defendant replied, "Oh, go home," and pulled the shade down in the face of plaintiff and her sister (p. 23).

Plaintiff's mother (Mary Fraser) visited the defendants' home a few days after the plaintiff's husband left her as aforesaid (p. 53), and there saw the defendant Catherine Hunke and her daughter. She told the defendant Catherine Hunke that she came there to see about her son, "To see if we couldn't get them together again," and the defendant replied, "I can't do anything about it." Plaintiff's mother then said to said defendant Catherine Hunke, "That is no way to talk, you ought to try," and said defendant replied, "What can I do?" Plaintiff's mother then said, "If you can't do anything, his wife will have to go to law about it," and said defendant Catherine Hunke then replied, "If you want to do that, we will fight you and her, too." Plaintiff's husband thereafter contributed meagrely and irregularly to the support of herself and her child (pp. 23-24). As a result thereof she went to his place of business in New York to ob-

tain some money from him, and he said to her, "I haven't any money; I know I owe you for three weeks, but I can't pay you now; I have to pay my father and I can't pay that" (p. 34, lines 16-19). The plaintiff continued to reside in the home in which she and her child and her husband resided at the time of the latter's desertion of her, until the first part of December, 1922 (p. 24, bottom). On December 1, 1922, plaintiff, who had been visiting her parents' home, was returning to her home, accompanied by her sister Florence, when they saw the plaintiff's husband *and his father* (the defendant Edward Hunke) coming, as it seemed, from the janitor's entrance of the apartment house in which the plaintiff resided, *with a bundle and suitcase* (p. 25, top). In November, 1922, the plaintiff swore out a warrant for her husband's arrest (p. 22, line 9). On November 28, 1922, the plaintiff, knowing that the defendant Edward Hunke was interested in the Capitol Theatre and that there was to be an opening performance in said theatre on said date, and feeling certain that her husband would be there with the defendants, kept watch outside of defendants' home and saw her husband come out of there and get into a limousine. She immediately called up police headquarters and Police Lieutenant Cash was assigned to accompany her to the theatre. After the performance her husband was leaving the theatre in the company of his mother and father and two sisters when he was placed under arrest (p. 26). The record of the Court of Quarter Sessions evidences that plaintiff's husband was ordered to pay to the plaintiff the sum of \$20 per week (p. 25). The plaintiff's husband mailed checks to her *in envelopes of the defendant Edward Hunke*, and upon which the name "Edward" was obliterated.

ated with pen and the word "Harry" substituted (pp. 27-28, and Plaintiff's Exhibit 1, p. 211). The envelope was mailed to the plaintiff from "West New York, N. J." (a post office for Woodcliff, N. J.). Another check was contained in an envelope (Plaintiff's Exhibit 2, p. 212). The defendant Edward Hunke testified that they were envelopes that he had in the house and if Harry wanted an envelope he used it \* \* \* (p. 57, line 17). At the time plaintiff's husband deserted her she was in "very poor health," and "was worried sick" (p. 28, lines 6 and 7). After her husband left her, her parents had to take care of her and she was unable to work (p. 28, lines 9-12), and her health was "worse" (p. 28, line 14). *Plaintiff received no moneys from her husband after January, 1923.* Neither of the defendants at any time after January, 1923, inquired of plaintiff about herself, her child or her husband; nor did they call at the plaintiff's home to inquire therefor (p. 29). While plaintiff and her husband were living together defendants were accustomed (about Christmas time) to send a gift to plaintiff's husband—but none to either the plaintiff or her child (p. 29). Whether such fact was in anywise significant of defendants' feelings toward her was a matter which the jury had a right to consider. Plaintiff was not very strong and worried a lot (p. 29, line 21). She had been in "poor health" since her husband left her (p. 29, line 23). She was "very much" in love with her husband at the time he left her (p. 29, line 25), and she says (p. 29, line 27), "I still think an awful lot of him." This she repeated in response to a question asked of her under recross-examination by the attorney for the defendants (p. 43, line 20). The defendants undertook to prove that the plaintiff knew that her husband was interested in some woman but she denied

knowledge thereof (p. 29, bottom). An attempt was made (p. 30) to show that the plaintiff and her husband went to a lawyer Hollander. This she denied. No proof was offered to substantiate such intimation, and (p. 39, line 12) she says she did not go either alone or with her husband to see a lawyer named Hollander. Plaintiff testified (pp. 30-31) that she visited the office of Jones & Baker, 50 Broad Street, New York, where her husband had been employed, and saw a Mr. Kennedy of whom she inquired as to when her husband left his employ, and Kennedy told her that her husband had left and didn't say a word about it (p. 30, bottom). She says Kennedy told her that her husband's mother and aunt had called every day at Jones & Baker's place of business and asked him (Kennedy) that in case he heard from her son Harry (plaintiff's husband) *he should not let plaintiff know of his whereabouts* (pp. 30-31). Plaintiff called to see Kennedy twice—once with her sister Florence (p. 30, lines 6 and 7 from bottom), and again with Police Lieutenant Cash (p. 34, top). It is manifest from a reading of the testimony of Kennedy that he undertook to impress upon the jury that the plaintiff's husband had been flirting or consorting with another woman. *His testimony throughout manifests its unreliability and untruthfulness.* The plaintiff and her sister Florence both testified that Kennedy did not say anything whatever upon their visit to the office of Jones & Baker about the plaintiff's husband living with another woman or that he was *supposed* to be living with another woman. The testimony of Florence Fraser with respect thereto appears on page 153. The testimony of the plaintiff in regard thereto appears on pages 147, 149, 150. An attempt was made to show that plaintiff's hus-

band was in debt and that plaintiff was aware thereof. Such she denied (pp. 36-37). When plaintiff's husband deserted her he was earning \$70 per week. He received \$50 a week from Jones & Baker and \$20 a week for accountant work that he did in the evenings for a butcher by name of Louis Wagner of 53rd Street and Ninth Avenue, New York (p. 35). This testimony was not denied. The defendant Catherine Hunke corroborated plaintiff's testimony as to the plaintiff's husband's employment with Wagner. She says (p. 181), "I went to Wagner's where my son worked as a bookkeeper." It was in *January, 1923*, that plaintiff visited the office of her husband's employers, Jones & Baker, and talked with Mr. Kennedy (p. 38, line 22)—*several months after her husband deserted her*. Defendants attempted to show that the plaintiff had mentioned to an attorney by name of Hollander that her husband had been running around with other women—apparently with a view of impressing the jury with the idea of mitigation of damages. Defendants' attorney asked (p. 39), "Did you or did you not complain to Mr. Hollander or talk to him in any way about your husband going around with other women? A. Oh, no. Q. Then you never mentioned to Mr. Hollander anything at all about your husband going around with women or a woman?", and the plaintiff replied, "A. No." The plaintiff was further interrogated by the attorney for the defendant (p. 40) as to whether she had mentioned to the janitress (Margaret Stone) of the apartment house in which she lived about the plaintiff's husband going out with other women, and the plaintiff replied, "A. Oh, no. Q. Never did? A. I never talked to her in any way except when I went for the baby carriage and bid her the time of the day" (p. 40). The defendants' attorney further

inquired of plaintiff (p. 40), "Q. You are sure that you never said anything to her about your husband going out with other women?", and the plaintiff replied, "A. No, sir. I did not." And again, at the bottom of said page, "Q. Did you say anything to the janitress about Harry, in connection with other women? A. No, sir." The defendants endeavored to show that the plaintiff did not get along very well with her husband, and quarreled with him. On page 41 the following appears under cross-examination by the defendants' attorney: "Q. How did Harry and you get along there? A. Very well. Q. You and Harry never had a quarrel then while you were at this Woodcliff apartment? A. No, sir; no quarrel. Q. Didn't you, nearly every day, have a quarrel with Harry about other women? A. He worked during the day. Q. At night, then? A. No, sir. Q. You never chased him out with a butcher knife? A. No; positively not." As to the intimation that the plaintiff chased her husband with a butcher knife the court interrogated the plaintiff (p. 41) as follows: "By the Court: Q. How big a man is your husband? A. He was about five feet ten inches and weighed about one hundred sixty. Q. How much do you weigh? A. I weigh 104 pounds."

The plaintiff never heard it suggested before the conversation she had with Kennedy that her husband had been attentive to any other women (p. 42, bottom). The testimony of Florence Fraser (a sister of plaintiff) evidences (p. 43) that she and Alice Hunke (a daughter of the defendants) was in the plaintiff's home on the night in October, 1922, when the defendant Catherine Hunke was there and when the plaintiff's husband came home late (p. 44). She was also with plaintiff *at the home of defendants* early one morning in October,

1922. She says (p. 44), "I went over one Sunday about seven or seven-thirty. I went up on the porch and rang the bell. Instead of opening the door and coming down, she (referring to the defendant Catherine Hunke) raised the window and said, 'What do you want?' I said, 'Is Harry here?' She said 'No.' I said, 'Come down, I want to talk to you.' She said, 'No, I'm in my night dress.' I said, 'We are all women; let us in.' I said, 'Is Harry in there,' and she said 'No.' I said, 'I saw his topcoat on a chair.' She said, 'Go home and go to bed.'" This witness testified that on December 1, 1922, she accompanied the plaintiff to her home about 9.30 P. M. and when they got to the vestibule of plaintiff's apartment she saw the plaintiff's husband *and his father* passing the door. She ran down after them; they had just turned the corner; turned north by Park Avenue. The plaintiff's husband had a suitcase (p. 45). She further testified (p. 45) of a visit she made to the defendant Edward Hunke at the Guttenberg Bank, to ask for assistance for the plaintiff's baby who was very ill, and that said defendant then said to her, "If my wife had me arrested like Lillian did Harry I would leave her too." This witness evidenced by her testimony (pp. 47-48) the layout of the entrance to the apartment in which the plaintiff resided at the time she observed the plaintiff's husband *and his father* "passing the front entrance—the other side, the outside entrance, along on Thirty-third Street." She was of the impression that the plaintiff's husband had "his belongings" in the suitcase which he was carrying from the house. She assigned as a reason therefor that "his clothes were not in his chifforobe and he must have taken them." She further says (p. 49), referring to her statement that the plaintiff's husband had taken his clothes away

with him in the suitcase, "I am not surmising; I know what was in there. There was nothing left in the apartment of his belongings." She reiterated (p. 50) that she saw the plaintiff's "topcoat" in his parent's home on the morning when she and the plaintiff called at the latter's home to inquire as to the whereabouts of plaintiff's husband—October 21, 1922, very early the morning after plaintiff's husband deserted her. The defendants' attorney under cross-examination elicited from the witness (p. 51, line 22) that she learned from the plaintiff that the latter's husband was accustomed to visit the home of the defendants at nights and stay there until about midnight. The plaintiff, under cross-examination by the attorney for defendants, testified (p. 55) (by way of refuting the testimony of Margaret Stone, the janitress) that if she and her husband had an ordinary conversation, or talked fairly loudly in their apartment, it would not be possible for their conversation to be heard in the janitor's apartment. William H. Kennedy, a witness for the defendants, testified, over the objection of counsel for the plaintiff, of conversations alleged to have been had between him and the plaintiff's husband and other persons in the employ of Jones & Baker, as well as conversations with the defendant Catherine Hunke and her sister. That his testimony is unworthy of much consideration, and very likely was so considered by the jury, is indicated by such instances as follows (p. 65): "I possibly told her that he was—I don't know just what I told her, but she wanted to know just what I knew and I told her that there had been women, presumably calling on the phone for Hunke. \* \* \* There was presumably a woman calling for Hunke at the office from time to time and it had got to the point where the different ones answering

the phone calls for Harry started to kid the woman that was calling Harry. It got so noisy that I had to call him down and ask him if he wouldn't have her not call at the office. That was all of the conversation I had with Mrs. Hunke at the time." And (p. 66): "Q. Did she ask you if you knew who the woman was? A. Yes, but I don't know if it was at that time. Q. Did you afterwards talk to her about the woman? About who she was? A. Later, some little time later, Mrs. Hunke called again to see me. This time there was a man introduced to me as Detective Cash, who was hunting this woman that Harry was supposed to be living with, as explained to me." This witness testified that his reason for not calling to see Fallon & Fallon, attorneys for the plaintiff, in response to a letter bearing date October 19, 1926 (Plaintiff's Exhibit 6, p. 216), was that he did not think it proper, in view of the fact that he expected to be called as a witness in behalf of the defendants; yet it appears (p. 68) that he had previously called at the office of plaintiff's attorneys and stated "in a general way" what he knew about the case. This witness gave the plaintiff his business card (pp. 70-71). He received a letter from Fallon & Fallon, attorneys for the plaintiff, dated October 19, 1926, and turned said letter over to the attorney for the defendants (p. 71, line 21; Plaintiff's Exhibit 6, p. 216). He did not acknowledge the receipt of said letter, though he says in his business it is the courteous thing to acknowledge the receipt of letters. The reason given by him for his not having acknowledged the receipt of said letter was, "I believe in a lawsuit if you are under subpoena by the defense in this case that it would be improper proceeding to have any conversation with the complainant's attorneys, and for that reason I did not

answer." He admitted that he was not under subpoena though he was under the impression that he would be subpoenaed for the defendants (p. 72). He admitted also that he was not in court under subpoena *but attended court voluntarily* as a witness in behalf of the defendants. Notwithstanding that this witness indicated by his testimony that he did not consider it proper "to have any conversation with complainant's attorneys" (p. 72, line 17); he says to the best of his belief his aforesaid business card was left with the attorney for the plaintiff *in order that the latter may get in touch with him* (p. 73, bottom). He indicated (p. 75) that such information as he claimed to have had about the plaintiff's husband "supposed" to be living with women was "only gossip" (p. 75, line 21). Though he mentioned alleged telephone calls coming to the office of Jones & Baker for the plaintiff's husband, nevertheless, when asked whether he knew if the calls were from a woman, he said "I do not" (p. 77, line 12). As to the information which he says was imparted by him to the plaintiff that her husband was living with a woman, he testified (p. 78, line 19), "I told her only what I had been told and found out by gossip and what the others gave me." And when asked as to what information he had that the plaintiff's husband was living with a woman, said (p. 78, line 26): "A. I had no information except what was reported by others. That was improbable—" He says he imparted this line of information to the defendant Catherine Hunke in the early part of 1923 (p. 79). It appears by the testimony of this witness (p. 80) that he visited the defendants' home for the apparent purpose of ascertaining whether he might obtain payment of the moneys which he alleged was owing to him by the plaintiff's husband. Whether he actually

received money from the defendant Edward Hunke appears uncertain. When asked (p. 80, line 12) whether the defendant Edward Hunke had paid to him the moneys said to be owing to him by plaintiff's husband, he replied "Yes." Yet, when asked whether he received from either of the defendants part of their son's indebtedness to him, he replied "No" (p. 80, line 18). The defendant Edward Hunke testified (p. 157, lines 3 and 7) that the witness Kennedy came to said defendant's house and asked if he would pay his son Harry's debt.

Kennedy again (p. 80, line 7 from bottom) testified that the statement alleged to have been made by him to the plaintiff and Detective Cash that the plaintiff's husband "supposed" to be living with a woman was "hearsay and gossip." This witness (pp. 80-81) had the audacity to say that the plaintiff's husband informed him that he was living with a woman other than his wife, but when asked (p. 82), "Q. Why didn't you say so before when you testified?", he replied, "A. I wasn't asked." Notwithstanding the admission alleged to have been made by plaintiff's husband to Kennedy that he was living with a woman other than his wife, or that he was running around with other women (whatever the admission or information imparted to Kennedy may be said to be), Kennedy, who was the superior officer of plaintiff's husband in the business concern of Jones & Baker, a stock brokerage firm, did not discharge plaintiff's husband, but permitted him to continue in the employ of Jones & Baker until he left of his own accord (p. 82). This witness admitted (p. 82 bottom) in response to a question propounded to him by the attorney for the defendants, that he had the right to discharge Harry Hunke if he so desired, but did not discharge him. Apparently with a view of bolstering up his testimony as previously given Kennedy

was recalled as a witness for the defendants (pp. 129-139), and testified (p. 130), "A. Harry told me that he was leaving his wife, that he had left his wife and was living with this other woman \* \* \*. It was after he had told me this that I suggested to my superiors not to give him the position because he was not a fit man for it." Yet this witness, who says the plaintiff's husband was not a fit man for a position which the firm of Jones & Baker—stock brokers—contemplated putting him in, continued him in employ as a bookkeeper a period of several weeks after his alleged confession of licentiousness. It was the proper function of the jury to determine as to the truthfulness of this witness, and if they considered him untruthful in some respects they had a right to regard his testimony throughout as incredible, or to sift from the whole testimony that which they considered truthful, if any. This witness says (p. 132) that he called on the defendants at their home prior to the plaintiff visiting him at the office of Jones & Baker. He says, "I wanted to find out from Harry's parents if they knew where he was." He further says (p. 133) his idea, briefly, was because Harry Hunke owed him \$350, and the defendants told him they did not know where he was. He indicated by his testimony (p. 133) that his visit to the home of the defendants was to suggest to them that he needed the money which their son Harry had induced him to become a guarantor for, and says he told the defendant Catherine Hunke that her son Harry was living with another woman other than his wife. Yet it appears from his testimony throughout that he had no proof thereof, his information being, as he says, merely "hearsay and gossip" (pp. 81-82). Was it believable by the jury that this witness made any such statement to the defendant Catherine Hunke about her son Harry, the plaintiff's husband? The jury were the ones to

determine the credibility thereof. This witness says (p. 135 bottom) that it was the first part of January, 1923, during the first half of the month, that Harry Hunke confessed to him about his living with another woman; *yet it appears that the plaintiff called to see Kennedy in the latter part of 1922 or the early part of 1923, and to the best of his belief Harry Hunke at that time had left the employ of Jones & Baker* (p. 62, line 7). The jury were the ones to say what credence should be given to the testimony of this witness in view of the various and contradictory statements made by him with regard to the alleged indiscretions, amounting to licentiousness and criminality, of plaintiff's husband. The improbability of the truthfulness of this witness' testimony is further manifested (p. 135 bottom) by his statement that when plaintiff called to see him the second time *he did not recall* telling her about her husband living with another woman. He says, "I don't recall telling about living with another woman—that is rather a difficult subject to talk about with a man's wife. I didn't tell her that." Yet throughout his testimony it is manifest that he claims to have stated to the plaintiff that her husband was "supposed" to be living with another woman, and that he was "running around" with other women. This witness apparently endeavoring to make as strong a case as possible in behalf of the defendants as to the alleged indiscretions of plaintiff's husband with other women, volunteered the further statement that when the plaintiff called to see him the first time (which was the latter part of 1922 or the early part of 1923, pp. 62-63), he didn't tell her he knew at that time that her husband "was living with this other woman or having intercourse with her" (p. 136, line 12). He says (p. 136, line 18) he did not tell plaintiff on either occasion of her visits to him that

her husband was living with another woman. The untruthfulness of this witness is further manifested (pp. 137, 138, 139) by the following: "Q. I understood you to say that you told Lillian Hunke it was the latter part of December that you told about these visits with women? A. I believe my testimony was the latter part of December or the first of January. Q. He continued in your employ until the 25th? A. Approximately. Q. Approximately four weeks? A. Not necessarily. Q. If it was the latter part of December or the first of January that you had this talk with Mrs. Lillian Hunke the time in between that would be more than two weeks, would it not? A. I said approximately two weeks. Q. You have said in answer to questions that you never said anything to Mrs. Hunke about his living with another woman. Didn't you tell the court and jury in answer to Mr. Burke's question about this woman that he was supposed to be living with? A. No, Harry going with. Q. Supposed to be living with, didn't you say? A. Possibly I did. Q. You told the court that you never told about his living with another woman? A. I told him I didn't tell that he was living with another woman. Q. But you did say yesterday to the court that you had told Mrs. Lillian Hunke that he was living with another woman? A. Possibly I did in a general way. Q. You are not blackening this man's character to his wife? A. No. Q. You should remember pretty well the complete story that you told to his wife? A. I do, very much. I told that he was living with another woman at the time. Q. You mean if you said yesterday in answer to Mr. Burke's question that you said to Mrs. Lillian Hunke that her husband was supposed to be living with another woman that that statement you made to her was true? A. If the testimony disclosed any such thing it is true. Q. Do you recall Judge Cutler

asking you whether you said anything to Mrs. Hunke about that in this case? A. All of my testimony has been to the best of my knowledge." By the court (p. 139): "Q. In the time spent yesterday where you said you heard of his living with another woman—you eventually stated that he told you that himself? A. Yes, sir, that is right? Q. Did you hear that before that time from anybody else? A. That was gossip."

*From the aforesaid testimony the following pertinent facts were capable of ascertainment by the jury upon which to predicate their determination that the defendants were guilty of the acts of wrongdoing alleged against them by the plaintiff, and as set out in the plaintiff's amended complaint (pp. 6-12).*

AS TO THE DEFENDANT CATHERINE HUNKE:

(1) That on October 12, 1922, when at the defendants' home, she (Catherine Hunke) made the gratuitous suggestion to her son Harry, the husband of plaintiff, that she thought it would be a very good idea if her son and the plaintiff would put their things in storage and both go back to work and in that way be able to save some money quickly and pay debts which her son Harry told her he owed, and that when the plaintiff remonstrated with her for making any such suggestion, and stating that she could not understand why said defendant suggested anything like that, the defendant said, "Well, if you do that, you will be able to save some money."

(2) That on October 20, 1922, said defendant, while visiting at the plaintiff's home, said to plaintiff that she thought it would be a very good idea for the plaintiff and her husband to put their things in storage; that the plaintiff could go home

to her mother and her husband could go home to the defendant, and that plaintiff and her husband would save money; that plaintiff's mother could take care of her baby. The plaintiff replied to said defendant, "Why should I break up my home? There is no reason for doing that. Harry is making a good salary; we get along nicely. I couldn't see why that should happen. I have a nice home and I don't want to break it up."

(3) That on October 21, 1922, said defendant visited plaintiff's home and remained there until 1 o'clock in the morning when her son (plaintiff's husband) returned home. Said defendant then took plaintiff's husband aside—in the dining room, but before taking him aside said to plaintiff, "Don't come with us. Let me talk to him." She then took him in the dining room and spoke with him a while. Before defendant left plaintiff's home, she said, "Harry (addressing herself to plaintiff's husband), we want to take you up to Montclair with us." Said defendant looked at the plaintiff and said, "I don't think you and the baby had better come. It is quite cold up there and we have no fire."

(4) That the following day (October 22, 1922) plaintiff's husband returned to his home about 6 o'clock, remained about half an hour and then went out, and never returned thereafter.

(5) That the following morning, between seven and seven-thirty, the plaintiff and her sister Florence went over to the defendants' home. Florence rang the bell and the defendant Catherine Hunke came to the window and inquired what was wanted. Florence said, "Harry didn't come home all night." The plaintiff didn't say anything. She was crying. The defendant Catherine Hunke said, "Oh, go

home and go to bed." Florence called the plaintiff's attention to a topcoat hanging over a chair in the defendants' living room. Plaintiff's sister Florence requested the defendant Catherine Hunke to "open and let us in." The defendant Catherine Hunke replied, "No, I am in my night dress." Plaintiff's sister Florence then said, "We are all women. That is all right. Let us in." Said defendant replied, "Oh, go home," and pulled the shade down in the face of plaintiff and her sister.

(6) That on November 28, 1922, the defendants (apparently harboring plaintiff's husband in their home) had plaintiff's husband with them to the opening of the Capitol Theatre. Plaintiff's husband left the defendants' house with the defendants; they all entered a limousine. He was arrested, on plaintiff's complaint, when leaving the theatre in the company of the defendants.

(7) That said defendants did not at any time inquire of plaintiff about herself, her child or her husband.

(8) That the defendants were accustomed to make Christmas gifts to plaintiff's husband, but none such were given to plaintiff or her child. From this the jury would undoubtedly have a right to infer whether or not such action manifested a feeling of ill-will against the plaintiff.

(9) That said defendant indicated that her son Harry (plaintiff's husband) was interested in another woman and that plaintiff was aware thereof, notwithstanding that the plaintiff, by her testimony, denied any such.

(10) That the defendant told Mr. Kennedy, whom she visited in the office of Jones & Baker, in New York, where her son Harry was employed, *that in case he heard from plaintiff's husband, he*

*should not let plaintiff know of his whereabouts.* This the jury would have a right to regard as indicating that said defendant was desirous of keeping plaintiff's husband from her.

(11) That when plaintiff's mother called to see said defendant a few days after plaintiff's husband had left his home (in October, 1922) to see if said defendant wouldn't do something to get the plaintiff and her husband together again, said defendant stated to plaintiff's mother, "I can't do anything about it." And when told by plaintiff's mother that if she wouldn't undertake to do something plaintiff would have to go to law about it, said defendant then said, "If you want to do that, we will fight you and her, too." Thus manifesting, as the jury may have inferred, a spirit of ill-will toward plaintiff.

*As to the defendant Edward Hunke:*

(1) He stood by and heard his wife suggest to her son (plaintiff's husband) on October 12, 1922, that his son and plaintiff break up their home, etc., as hereinabove (2) mentioned.

(2) That he harbored plaintiff's husband in his home after he deserted the plaintiff; that he gave him the free use of the stationery in his home (the envelopes offered as exhibits in plaintiff's behalf) with which to forward moneys to the plaintiff towards the support and maintenance of herself and her child.

(3) That he took plaintiff's husband with him and his wife (from his home in a limousine) to the Capitol Theatre on November 28, 1922, to witness the opening performance at said theatre, and this at a time when he knew that the plaintiff had previously (on November 20, 1922) entered a com-

plaint against her husband, and that Detective Cash was looking for him. Plaintiff's husband was arrested, on the complaint of plaintiff, when he was leaving said theatre in the company of his parents.

(4) That he accompanied his son Harry (plaintiff's husband) on December 1, 1922, about 9.30 P. M., to plaintiff's apartment, in Woodcliff, N. J. (in the absence of plaintiff therefrom), when plaintiff's husband removed "his belongings" or wearing apparel from said apartment. His visitation thereto with his son on this occasion was testified to by both plaintiff and her sister Florence.

(5) His statement to plaintiff's sister Florence that *if his wife had him arrested like plaintiff did her husband, he would leave his wife, too.* It will be noted that plaintiff did not have her husband arrested for more than five weeks after he deserted her.

(6) That said defendant met plaintiff on a ferry boat (p. 119, bottom) and plaintiff asked the defendant if he knew where her husband was *and the defendant walked away from her.*

*This is not a case in which the question of the right of defendants, as parents of plaintiff's husband, to advise their son in regard to his domestic relations.* The defendants have not testified that they were aware that the plaintiff and her husband were not getting along together, or that their son (plaintiff's husband) sought advice from the defendants, or that any advice was given to him by them with respect to his domestic relations, except such as plaintiff's case shows as against the defendant Catherine Hunke, *which evidences gratuitous and unwarranted intermeddling on said defendant's part with the marital affairs of*

the plaintiff and her husband. The defendant Edward Hunke testified (p. 112, line 5) as follows: "Q. So far as you know they got along pretty well together? A. I always thought—I didn't know any different until he left his wife." And (on same page, line 15) "A. From all I know they were getting along well." And (on p. 123, line 12) "A. From all appearances they seemed to be getting along."

*The defendants did not set up in their answer to the complaint that they advised their son (plaintiff's husband) about his domestic affairs; nor did they allege, in their answer, that plaintiff's husband had in anywise complained to them that he was not getting along well in his domestic affairs, or that he sought advice from them as to his domestic affairs. The defendants, as evidenced by the answer filed by them (pp. 13-14), were content to deny all of the allegations of the plaintiff's complaint. They did not plead confession and avoidance, nor did they plead that they advised the plaintiff's husband in connection with his domestic affairs, and that they, as his parents, were privileged to advise with him in regard thereto, and pray exoneration from liability to the plaintiff for the allegations in the plaintiff's complaint because of their relation of parents of plaintiff's husband. Therefore, the application for nonsuit, and for direction of verdict, based on the relation of parent and child, advice given to plaintiff's husband with respect to the domestic relation between himself and plaintiff, bona fides of such advice, etc., was untenable.*

### As to the Law.

Plaintiff-appellee urges, *in limine*, that the State of the Case does not show any legal objections made to the rulings of the trial judge. The record discloses that the attorney for the defendants occasionally, throughout the trial of the case, said, "I object"; "I object to that"; "Objection," but such are insufficient in law for the reason that no grounds for the objection were stated. Therefore, there is nothing for the appellate court to consider.

*Joseph M. Byrne Co. v. Snead & Co.*, 98 N. J. L. 257;

*Simmons Pipe Bending Works v. Seymour*, 80 N. J. L. 465;

*O'Donnell v. Weiler*, 72 N. J. L. 142;

*Blanchard Bros. v. Beveridge*, 86 N. J. L. 561.

The record may be searched in vain for legal objections by the defendants' counsel. An objection to the admission of evidence to be available on appeal must point out a precise and definite ground of objection.

*English v. Continental Folding Box Co.*, 98 N. J. L. 438;

*Semken v. Hollander*, 82 N. J. L. 45;

*Leiferant v. Progressive Agency*, 98 N. J. L. 526;

*Kargman v. Carlo*, 85 N. J. L. 635;

*Supreme Court Rule 144.*

The court will not consider, on appeal, an alleged error not brought to the attention of the

trial judge and not shown in the State of the Case to have been excepted to.

*O'Donnell v. Weiler*, 72 N. J. L. 142;  
*Simmons Pipe Bending Works v. Seymour*, 80 N. J. L. 465.

The grounds of appeal urged in this case are without legal merit. It is not the function of the appellate court to search for errors not definitely pointed out.

*State v. Hendrickson*, 95 N. J. L., p. 10, at p. 13, bottom.

Grounds of appeal which are not argued by the appellant, either orally or in the brief, will be considered abandoned. The causes for reversal must be definitely pointed out in the grounds of appeal with sufficient precision to apprise the court and opposing counsel of the injury complained of.

*Hintz v. Roberts*, 98 N. J. L. 768.

## POINT I.

The first ground of appeal is that the court erred in not ordering a mistrial when counsel for the plaintiff in his opening made remarks directed to the defendant Edward Hunke which the defendants regarded as derogatory.

The second ground of appeal is that the court erred in not taking some step to mitigate the prejudice against the defendant Edward Hunke "credited" by derogatory remarks of plaintiff's counsel in his opening of the case to the jury.

The aforesaid grounds of appeal will be argued together.

If counsel for the defendants considered that the remarks of counsel for plaintiff in addressing the jury were improper, the correct practice was to ask the trial judge to admonish counsel against making such remarks—or, request the trial judge to charge the jury to disregard them. Counsel for the defendants did not pursue either of such courses of procedure. He was content to enter an exception to the remarks (p. 16). He did not ask for a mistrial. A refusal by the trial judge to grant a mistrial for alleged improper remarks by counsel is discretionary on the part of the trial judge and cannot be reviewed on appeal.

*Smith v. Brunswick Laundry Co.*, 93 N. J. L. 346.

## POINT II.

**The third ground of appeal is that the court erred in receiving in evidence Plaintiff's Exhibit No. 12, over the objection of defendants' counsel.**

No objection was made by defendants' counsel to the receipt in evidence of said exhibit (p. 94), and even though the admission in evidence of said exhibit was objected to by defendants' counsel, the admission thereof, which is quite immaterial and non-prejudicial, would not be a sufficient reason for a new trial.

*Dantes v. McGann*, 98 N. J. L. 55, at p. 57, bottom.

## POINT III.

The fourth ground of appeal is that the verdict of the jury was contrary to the weight of evidence. The eleventh ground of appeal is of like import. The fifth ground of appeal is that there was no evidence to support the verdict of the jury. The twelfth ground of appeal is of like import. The sixth ground of appeal is that the damages awarded by the verdict of the jury were excessive. The thirteenth ground of appeal is of like import.

The aforesaid grounds of appeal will be argued together.

The determination of the amount of damages and the weight to be given to evidence is peculiarly the province of the jury. The court has no power to review or determine, on appeal, the weight of evidence, or consider whether the amount of the verdict is excessive.

*Smith v. Brunswick Laundry Co.*, 93 N. J.

L. 346.

See also *A. Makray, Dec. vs McCulloch* 5 N. J. Adv. Rep. 264  
*Burrichter vs Wisniewsky*, 5 N. J. Adv. Rep. 264

The verdict of a jury will not be set aside as against the weight of evidence merely because it might be permissible for the jury to find a different verdict under the evidence, or because the court, if sitting as a jury, could find a different verdict.

*Lembeck v. Harms*, 98 N. J. L. 95;

*Joseph M. Byrne Co. v. Snead & Co.*, 98 N. J. L. 95;

*Savino v. Goldberg*, 92 N. J. L. 617;

*Smith v. Brunswick Laundry Co.*, 93 N. J. L. 436.

## POINT IV.

The seventh ground of appeal is that the court erred in denying the motion of the defendants for a judgment of nonsuit at the close of plaintiff's case. The ninth ground of appeal is of like import. The eighth ground of appeal is that the court erred in denying the motion of the defendants, at the close of the case, for a direction of verdict in favor of the defendants. The tenth ground of appeal is of like import to the eighth ground.

These grounds of appeal will be argued together.

It is elementary that it is the province of the jury to settle the facts and to draw legitimate inferences therefrom.

*Daly v. Singac Auto Supply Co.*, 5 N. J. Adv. Rep. 163, at 165.

In *Perth Amboy Dry Dock Co. v. Crawford*, 5 N. J. Adv. Rep. 154, at 162, this court says: "A jury is the arbiter of disputed questions of fact."

When the trial judge was requested to nonsuit, and to direct a verdict, he was obliged to determine whether *any* facts had been established by evidence from which plaintiff's allegations of wrongdoing *may* have been reasonably inferred, and to leave it to the jury to say whether from those facts plaintiff's allegations of wrongdoing *ought* to be inferred.

*Kerner v. Zebb*, 5 N. J. Adv. Rep. 169;  
*Newark Passenger R. R. Co. v. Block*, 55  
N. J. L. 605, 608.

When, as in this case, it was impracticable for the trial judge to whom was made the motion for

nonsuit to say what facts had been established, it was his duty to deny the motion. And when the motion for direction of a verdict was made, the facts on the whole case being in substantial dispute, if not impossible of reconciliation, the real facts could only be determined by the jury settling the credit to be given to the witnesses, and weighing and comparing their varying testimony.

*Hayward v. North Jersey St. Ry. Co.*, 74 N. J. L. 678, 684.

*Kerner v. Zebb*, 5 N. J. Adv. Rep. 169, 171, 172.

*Burrichter vs. Wisniefsky*, 5 N. J. Adv. Rep. 204.

The trial judge, in performing the function devolving upon him by law, was obliged to exercise care not to trench on the peculiar province of the jury to determine questions of fact, and to bear in mind not whether *he* would infer that the allegations of wrongdoing made by the plaintiff against the defendants had been established by the facts adduced, but whether such could be reasonably and legitimately inferred therefrom *by the jury*. Therefore, if the trial judge was of the opinion (as appears from his refusal to grant the motion) that the real facts had not been established by the evidence, but remained in substantial dispute, he was obliged to submit them, and the inferences to be drawn from those which the jury might find established, to the determination of the jury.

*Newark Passenger R. R. Co. v. Block*, 55 N. J. L. 605, 607, 608.

And in passing upon the motions for nonsuit and for direction of verdict, it was beyond the province of the trial judge to weigh the evidence. He was obliged to regard as true all evidence which sup-

ported the view of the plaintiff and give her the benefit of all legitimate inferences to be drawn therefrom by the jury in her favor.

*Littman v. Slack*, 5 N. J. Adv. Rep. 139, 140, bottom.

*Andre v. Mertens*, 88 N. J. L. 626.

And under such circumstances, it would have been error for the trial judge to have withdrawn the case from the jury.

*Newark Passenger R. R. Co. v. Block*, 55 N. J. L. 605, 608.

A motion for a nonsuit admits the truth of the evidence adduced in behalf of the plaintiff, and of every inference of fact to be legitimately drawn therefrom, but denies its sufficiency in law.

*Kerner v. Zebb*, 5 N. J. Adv. Rep. 169, 171, and cases therein cited.

In the case now before the court facts and inferences to be drawn therefrom were before the court from which the allegations of wrongdoing complained of by the plaintiff as against the defendants may have been inferred, and a jury question was thus presented.

*Kerner v. Zebb*, 5 N. J. Adv. Rep. 169, at 171, 172.

The defendants' counsel, in his brief under Part Eight, of Point VI (p. 28), complains of the plaintiff having recalled the defendant Edward Hunke and examining him as to testimony given by him in an examination before a Supreme Court commissioner, and of his examination with reference to a trip to Worcester, Massachusetts, made by the

defendant Catherine Hunke and some members of her family (Case, pp. 158, 159), but the court will perceive upon an examination of the State of the Case that *defendants' counsel did not object thereto*. Consequently no error may be urged before this court with respect thereto.

Counsel for appellants argues in his brief (p. 30) that the defendant Edward Hunke may not be held liable, in damages, for a tort committed by his wife, who is co-defendant. It is respectfully urged in behalf of the plaintiff-appellee that the jury was warranted by the evidence in the case to determine that said defendant by his apparent *tacit acquiescence* in his wife's intermeddling with the domestic affairs of the plaintiff and her husband, and her utterances and conduct towards effecting a separation by her son from the plaintiff, with his knowledge, would suffice to warrant the jury in finding a verdict against him in behalf of the plaintiff; but, aside therefrom, it is respectfully urged in behalf of the plaintiff-appellee, that said defendant Edward Hunke is liable under the law of our state for a tort such as the one alleged against the defendants, committed by his wife, Catherine Hunke. *But no such legal objection was urged by defendants' counsel in the court below*, on the motion for nonsuit (pp. 57-58) or on the motion for direction of verdict (pp. 187, 188, 189), or otherwise, and consequently no such question can now be raised in this court.

It will be observed, also, from an examination of the State of the Case, that the defendants-appellants did not make any objection whatever to the trial judge's charge to the jury. The only exception to the trial judge's refusal to specifically charge the jury was that taken by counsel for

plaintiff-appellee (p. 205, bottom) and no objection is urged before this court as to such refusal.

At common law the husband was jointly liable for the voluntary torts of his wife, and this rule has not been abrogated in the state by express statute. In *Sargent v. Fedor*, 3 Misc. Rep. 832, the Supreme Court in affirming a judgment of the Bergen County District Court, in an action brought against husband and wife, for alleged slander by the defendant's wife, held that the husband was liable in said action though he in no way participated in the wife's tort, and declared that since the common law rule of liability is adhered to in this state, as against the husband, the consequent rule of common law damage is equally applicable.

When it is considered that a jury in the Hudson County Circuit of the Supreme Court presided over by Cutler, J., as evidenced by the Supreme Court Clerk's docket, rendered a verdict of \$10,000 in favor of the plaintiff, against the defendants, by default, and that a subsequent jury, upon a trial on the merits of the case, rendered a verdict of \$12,500 in favor of plaintiff and against the defendants, this court should not undertake to disturb said verdict, even though the court itself, sitting as a jury, might find a different verdict.

*Lembeck v. Harms*, 98 N. J. L. 95.

*Joseph M. Byrne Co. v. Sneak & Co.*, 98 N. J. L. 257.

*Sivano v. Goldberg*, 92 N. J. L. 617.

*Smith v. Brunswick Laundry Co.*, 93 N. J. L. 436.

To avoid repetition of the rules of law which plaintiff-appellee regards as applicable to the case in question, other than the rules hereinabove particularly mentioned and to sustain which au-

thorities of this state have been cited, counsel for the plaintiff-appellee respectfully refers to and urges consideration of the rules of law set out in the plaintiff's requests to charge (Case, pp. 206, 207, 208), and the legal authorities referred to for the support thereof.

**It is respectfully submitted, in behalf of the plaintiff-appellee, that the judgment below should be affirmed, with costs.**

Respectfully submitted,

FALLON & FALLON,  
Attorneys for Plaintiff-Appellee.

JOHN J. FALLON, JR.,  
of Counsel.

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## Court of Errors and Appeals

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LILLIAN HUNKE,  
Plaintiff-Respondent,

—vs.—

EDWARD HUNKE and CATHERINE  
HUNKE,  
Defendants-Appellants.

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### Preliminary Statement.

An appeal from the Supreme Court, Hudson County Circuit, from a judgment of Twelve Thousand, Five Hundred (\$12,500.00) Dollars, in favor of the plaintiff, after a trial by jury. Both defendants appeal.

### Statement of Facts.

The plaintiff Lillian Hunke married Harry Hunke, a son of the defendants, in August, 1919. The young couple went to live in New York City, and resided there until June, 1922, when they moved to Woodcliff, a section of the Township of North Bergen, in Hudson County.

They resided a few blocks from the husband's parents and a short distance from the home of the wife's parents in Weehawken, N. J.

The plaintiff claims that until her removal to Woodcliff, her married life was a happy one, but this is contradicted by the defendants, who con-

tend that their boy and his wife were always quarreling, and that the wife even chased him out of his New York home with a butcher knife and that he had lost his love for his wife and had been indulging in gambling, had been running around with another woman, and had contracted considerable indebtedness.

The plaintiff denied all knowledge of her husband's delinquencies and claims that Harry was home with her evenings until she moved to Jersey, when he began to neglect her. This continued until October 12, 1922, when the plaintiff alleges that she and her husband were in the defendants' home and her mother-in-law said that she and Harry should separate, he going to his mother's home and she going to her mother's home and both going to work so as to pay Harry's debts. The plaintiff would not do this, and about October 21st, another conversation was held between the plaintiff and the defendants on the subject, and the plans were again discussed.

On about October 22nd, the plaintiff claims she went to the defendants' home and was refused admittance and that through the window, her sister who was with her, saw her husband's top-coat on a chair.

Harry Hunke deserted his wife and child. The plaintiff alleged he was secreted by the defendants and, finally one night as he was coming out of the theatre in company of his parents, Harry was arrested for desertion. Later he pleaded non vult and sentence was suspended; he then disappeared from the scene entirely, but plaintiff claimed defendants knew where he was and were concealing his whereabouts. She claimed that her mother-in-law knew her son was living in Detroit under the name of "Howell," but

that the mother-in-law said, that upon learning of this rumor, she reported it to the County Prosecutor, as she and her husband wanted to get rid of the trouble and avoid more trouble. The plaintiff claimed that in 1925, the mother-in-law went to Worchester under the name of "Hunter" to see her son Harry, Mrs. Hunke claimed she went to see her sister, and she alleges that she did everything possible to keep the young people together.

The defendant Edward Hunke is involved by the plaintiff, because he is Catherine Hunke's husband. They claim he was present at the conversation on October 12th, but said nothing. The plaintiff met him casually on the ferry boat subsequently to the desertion and asked him where Harry was, and he said he did not know and then walked away. These are about the only ways in which the Hunkes are connected with the allegations in the complaint.

The details of these facts will be mentioned as the various points are discussed.

### POINT ONE.

**In alienation suits, parents are not liable for the consequence of advice given by them to their children in good faith and without malice.**

In this class of cases, parents in advising their children, on the children's domestic relations are to a very great extent, privileged characters. There is nothing on earth more noble or sublime,

nothing on earth nearer to our concrete conception of Divine Love, than a Mother's love for her child. A Father's love for his child stands a trifle lower than a Mother's, but still it is the deepest love man feels on earth.

This was the root of the law set forth in this point of the brief.

In this Country, it first found expression in the case of

*Hutcheson vs. Peck*, 5 Johns 196.

In this case, Chief Justice Kent, in the concurring opinion, says:

“A father's house is always open to his children; and, whether they be married or unmarried, it is still to them a refuge from evil and a consolation in distress, natural affection establishes and consecrates this asylum. The father is under even a legal obligation to maintain his children and grandchildren, if he be competent and they unable to maintain themselves; and, according to Lord Coke, ‘it is nature's profession to assist, maintain and console the child.’ I should require more proof to sustain the action against the father, than against the stranger. It ought to be either that he detains the wife against her will or that he entices her away from her husband by improper motives. *Bad or unworthy motives cannot be presumed. They ought to be positively shown or necessarily deduced from the facts and circumstances detailed.* This principle appears to me to preserve in due dependence upon each other and to maintain in harmony the equally strong sacred interests of the parent and the husband.”

In addition, we have the following cases to support this point:

*Schouler Domestic Relations*, 6th Edit,  
 Sec. 1335;  
*Oakman v. Belden*, 94 Maine 280 (47  
 Atl. Rep. 553);  
*Bennett v. Smith*, 21 Barb 439;  
*Boland v. Stanley*, 88 Ark. 562 (185  
 S. W. 163);  
*Kleist v. Brechting*, 232 Tex Rep. 555  
 (146 C. C. A. 513);

and other cases to follow in support of other branches of this point.

## POINT TWO.

**In alienation suits, it is presumed that advice given by parents to their child on domestic relations, is given in good faith. The plaintiff must overcome this presumption of bona fides.**

In suits of this character,

“Bad or unworthy motives cannot be presumed. They ought to be positively shown or necessarily deduced from the facts and circumstances detailed”

such is the language of Chief Justice Kent in the leading case on the topic.

*Hutcheson v. Peck*, 5 Johns 196.

In a subsequent case, *Miller vs. Knibbs*, 193 Mass. 556 (79 N.E. 762), the following language is in the opinion after dwelling upon the right of parents to advise their child in it's domestic relations:

“And the burden is upon the plaintiff to show that the defendant has been prompted by malice in what he has said and done and to overcome the presumption that he acted under the influence of natural affection and for what he believed to be the real good of his child.”

We find this language in *Reed vs. Reed*, 6 Ind. App. 317 (33 N.E. 638):

“All legitimate presumption in such cases must be that the parent will act only for the best good of the child. The law recognized the right of the parent, in such cases, to advise the son or daughter, and when such advice is given in good faith and results in a separation, the act does not give the injured party a right of action. In such cases, the motives of the parent are presumed good until the contrary is made to appear.

Other cases on the point and also sustaining the first point are:

*Bennett vs. Smith*, 21 Barb. 439;  
*White vs. Ross*, 47 Mich. 172 (10 N.W. 188);  
*Westlake vs. Westlake*, 34 Ohio St. 621;  
*Brown vs. Brown*, 124 N. C. 19 (32 S.E. 320);  
*Young vs. Young*, 8 Wash. 81.

Why even advice given by "a stranger" in good faith has defeated a suit for alienation of affections. How much greater should be the latitude given to a parent?

*Tasker vs. Stanley*, 153 Mass. 148 (26 N.E. 417),

and the existence of malice *must be affirmatively* proved, for a parent who advises his or her child to leave the martial home is presumed to have done so out of parental affection and solicitude for the welfare of the child and he or she cannot be held liable unless the plaintiff, who has the burden of proof, establishes that his advice or conduct is actuated by malicious motives.

*Hossfeld vs. Hossfeld*, 110 C. C. A. 131 (188 Fed. 61);

*Heisher vs. Heisher*, 151 Iowa 503 (131 N.W. 676);

*Workman vs. Workman*, 43 Ind. App. 382 (85 N.E. 997);

*Miller vs. Miller*, 122 Mo. App. 693 (99 S.W. 757);

*Beisel vs. Gerlach*, 221 Pa. 232 (90 Atl. 721);

and the measure of proof of malice must be greater than is necessary in the case of a mere stranger.

*Ickes vs. Ickes*, 237 Pa. 582 (85 Atl. 885).

The acts of parents toward their children are treated by the decisions in the same manner as

advice is treated. And it has been determined that the advice given to a son is in the same category as advice given to a daughter.

*Heisher vs. Heisher*, 151 Iowa 503 (131 N.W. 676) ;

*Melcher vs. Melcher*, 102 Neb. 790 (169 N.W. 720) ;

*Schouler on Domestic Relations*, 6th Edition, Sec. 1335, on Pg. 1588.

### POINT THREE.

**Even if the information and facts upon which the advice is based, proves to be false and untrue, the parents are not liable if they acted in good faith.**

This principle was enumerated early in the study of this class of cases.

In *Bennett vs. Smith*, 21 Barb. 439, in speaking of this precept of law, it was said:

“It is enough,” said the Court, “for his protection that he was warranted in such belief and acted from pure motives.”

The Court in speaking on this point said, in *Oakman vs. Belden*, 94 Maine 280 (47 Atl. 553):

“It may turn out that the parent acted upon mistaken premises or upon false information or his advice and his interference may have been unfortunate, still we

repeat, if he acts in good faith, for the daughter's good upon reasonable grounds of belief, he is not liable to the husband."

Many of the foregoing cases likewise sustain this Point.

#### POINT FOUR.

**This action being a tort, it must be treated as a tort, and the plaintiff, among other things, prove,**

**A. That the defendants were the procuring cause of the alienation.**

**B. That they were the proximate cause of the alienation.**

**C. That they spoke and acted as they did with the intention of causing the alienation.**

The plaintiff would have no cause of action, unless the acts complained of actually caused the loss of affection of her husband.

It was also necessary to prove that these conversations were intended for the expressed purpose of alienating the affection of the husband from the plaintiff.

*Schouler on Domestic Relation*, 6th Edition, Sec. 1335, Pg. 1586,

and the cases therein cited.

"Malice" is not defined in our Jersey decisions in reference to this class of cases, but it means and has been defined to be

"A wrongful act done intentionally without just cause."

*Zimmerman vs. Whitely*, 134 Mich. 39 (95 N.W. 989).

*Schouler in Domestic Relations*, says in this point:

"Liability is imposed upon an intermeddler where he purposely and unjustifiably induces either husband or wife to abandon the other, but it is not imposed upon him, unless, he was the procuring cause of the separation."

*Schouler on Domestic Relations*, 6th Edition, Sec. 1335, Pg. 1588.

#### POINT FIVE.

**The defendants' motions for nonsuit and direction of verdict in favor of the defendants should have been granted, particularly as to the defendant Edward Hunke.**

In order to assist in applying the rules of law, we have referred to, we print, in the following pages, all of the testimony in the case, as to the acts and statements of the defendants, bearing on the question of alienation and defendants' motives. We respectfully submit, that there is nothing to show that the separation was due to anything said or done by either defendant or of malice or bad motive.

## PART ONE.

PLAINTIFF ADMITS HER HUSBAND  
TOLD HIS MOTHER HE OWED DEBTS.

The plaintiff's story states that after her marriage, she went to live in New York City, where she resided until June, 1922. She had one child; and in June, 1922, she moved to 100 West 31st Street, Woodcliff, which is a section of the Township of North Bergen. She said she lived very happy in New York, her husband always come home at nights and that her husband worked with Jones & Baker, Stockbroker, at 60 Broad Street, New York City, and received \$70.00 per week (State of Case, Pg. 17); that on October 12th, 1922, she and Harry were at the defendants' house, Mrs. Hunke, Sr., suggested the breaking up of the plaintiff's home, as appears by this examination of the plaintiff, by Mr. Fallon, her counsel.

"Q. Please tell the Court and Jury what was said at that time?

A. She said she thought it was a very good idea if we would put our things in storage and both go back to work and in that way, be able to save some money quickly and *pay the debts which Harry told her he owed.*

Q. *Did Harry have any debts that you know of contracted with the home?*

A. Absolutely none.

Q. What did you say to her, if anything, when she made that remark?

A. I felt terribly bad about it, I couldn't.

Q. What did you say?

A. Break up our home—nothing like

that—I couldn't understand why she suggested anything like that.

Q. Was there anything else said that you recall?

A. She said, 'Well, if you do that, you will be able to save some money.'

We would like to call the Court's attention to the fact that this is a conversation between Mrs. Hunke, Sr., and the plaintiff and her husband—It is not what was told to "Harry" as the examination in the beginning would seem to imply, but a discussion in which the plaintiff participated. There was no malice here expressed or implied and nothing to impart to these defendants any bad faith.

Out of the plaintiff's own lips comes the justification of the officially reported language used:

"The plaintiff says, 'She (Mrs. Hunke, Sr.), said she thought it was a very good idea, if we would put our things in storage and in that way, be able to save money quickly *and pay the debts which Harry told her he owed.*'"

Here is an admission that Harry had told his mother that he had debts which he owed.

It makes no difference under the decision cited, whether the wife knew of these or not.

If she does not know, it would not be the first time an embarrassing financial condition is concealed from the wife, and if we know human nature, it will not be the last.

Nor does it make any difference whether Harry owed the debts or not—he told his mother he did. As a matter of fact he did owe debts as will be shown later on.

*PART TWO.*

## DEFENDANT CATHERINE HUNKE, WITNESS FOR PLAINTIFF.

Later on in the testimony, the plaintiff under direct examination said (Case, Pg. 21, Line 5) :

“Q. Please tell the Court and jury what she said at that time.

A. That she thought it would be a good idea to put our things in storage; that I could go home to my mother and that Harry could go home to his mother and that we would save money. My mother could take care of my baby— I said, ‘Why should I break up home, there is no reason for doing that, Harry is making a good salary, we are getting along nicely,’ I couldn’t see why that should happen. I had a nice home and I didn’t want to break it up.”

The plaintiff said this conversation was held in October, 1922. The plaintiff participated in this discussion of her domestic affairs.

On October 21st, 1922, the plaintiff claims that Mrs. Hunke, Sr., called at her flat and waited until Harry came home and, under examination of her counsel, the plaintiff recites what took place:

“Q. When your husband came home, what if anything did your mother-in-law say in your presence?

A. Nothing in my presence. She took him in the dining room.

Mr. Burke: I object.

Q. She took him aside.

A. Before she took him aside, she said to me, 'Don't come with us, let me talk to him', and she took him into the dining room and spoke with him awhile and before she left, she said, 'Harry, we want to take you up to Montclair with us.' She looked at me and said, 'I don't think you and the baby had better come. It is quite cold up there and we have no fire.'

Q. Do you know what she meant by referring to Montclair?

A. That was their summer home." (Case, Pg. 22, top to line 20).

The next day Harry Hunke left his wife and the following morning the plaintiff and her sister went to the defendants' home. They say that Mrs. Hunke would not receive them, and that she told them to go home and go to bed. They claim they saw Harry's top-coat hanging over a chair, from which they deduced he was there. (Case, Pg. 23, Line 10, etc.)

Mrs. Hunke tells a different story to the effect that it was cold and that after she had dressed, she came down to let her daughter-in-law in, but that no one was in front of her door when she opened it. The plaintiff's counsel made her his witness, and she testified in reference to this incident as follows (Case, Pg. 182, Line 20, etc.):

"Q. You remember Mrs. Fraser's coming to your house?

A. Yes.

Q. Do you remember saying, 'What can you do, if they cannot live together, that they must break up?'

A. No.

Q. What did you do?

A. She came to my house crying. She

said it was such a terrible trouble in Harry's going away. I said, 'yes.' She said, 'What can you do?' I said, 'I don't know what to think. Why do they quarrel?' She says, 'Can you do anything?' I said, 'I will do all I can.' We had a very friendly talk. My remarks were friendly. I said to her, 'If your daughter would only be nice to me.' I said, that 'they come up to my door and called me names,' and about coming to Court, I said, 'Wait until I get my clothes on and I come down and you can see whether Harry is here or not.' I went and got my clothes on and when I got down to the door, they were going down the street sticking their fingers up to their noses. She says, 'Are they mean to you, too?'"

Here there is already a flat contradiction of the plaintiff's story and evidence of her own lack of good faith. This is testimony of the plaintiff's case from a witness called by her counsel and is there not subject to impeachment.

### *PART THREE.*

In November, 1922, the plaintiff swore out a warrant for her husband's arrest. She waited for her husband at the opening performance of the Capitol Theatre, in which Mr. Hunke, Sr., was interested. The husband was arrested, and he was subsequently paroled and ordered to pay \$20.00 per week. (State of Case, Pg. 25, Line 20.)

There was no malice in that. A son going to the theatre with his mother, father and sisters, particularly as it was the opening show of a new theatre in which his father held some stock.

Are children to refrain from seeing their parents because they quarrel with their husbands or wives? And if the plaintiff's love for her husband was so great, how could she in the course of one short month put him and his parents to such humiliation and make a criminal out of him, because she gave him a criminal record by this move. It certainly was not a move calculated to affect a reconciliation, and there is not a scintilla of evidence in this episode showing malice or bad faith in the elder Hunke's, in this unfortunate matter to the present point.

The next step in the plaintiff's story was that she saw her husband and Mr. Hunke, Sr., leave her apartment as she was entering the lobby, after returning from dinner with her mother (State of Case, Pg. 24, Line 35, et seq.). Her sister who was with her surmised the Hunkes were taking Harry's clothes out. (State of Case, Pg. 48, Line 18.)

This occurred on Dec. 1st, and the plaintiff moved a few days later (State of Case, Pg. 24, Line 28 et seq.), and went to live with her parents in 51 Second Street, Weehawken (State of Case, Pg. 16, Line 40).

Edward Hunke denies his part in this episode (State of Case, Pg. 121, Line 1).

Even if this were true, how was this evidential as to showing malice or mala fides on the part of the defendants? The Court's attention is called to the fact, that the plaintiff and her husband arrested on November 28 (State of Case, Pg. 26, Line 1), and she claims he went for his clothes on Dec. 1st.

*PART FOUR.*PLAINTIFF'S CROSS EXAMINATION  
EVASIVE AND CONTRADICTIONARY.

On cross examination, the plaintiff stated her husband had received \$50. from Jones & Baker, instead of \$70., as she had stated in her direct examination, and that he had made \$20. a week more from one Louis Wagner for working after office hours for him (State of Case, Pg. 35, Line 7).

She also stated that in January, 1923, she went to see Mr. Kennedy who was her husband's superior in his work. Then she learned her husband had gone around with a female cashier. She had denied any knowledge of this girl at first (State of Case, Pgs. 31-32), but admitted her mistake afterwards (State of Case, Pg. 33). She visited Mr. Kennedy twice, once with her sister, once with a Lieutenant Detective of Police. She denied she knew her husband was in debt until January, 1923, under cross examination she said:

“Q. You told Mr. Fallon that you didn't know that your husband was in debt.

A. Yes, sir, I didn't know.

Q. Mr. Kennedy will you please stand up, please (a man stood up in the Court Room). Don't you know that your husband was in debt and that he had to pay interest on \$250.?

A. You asked me when he was in debt. In October, you said, his mother said, 'You have so many debts.' She said, 'Don't you know he was in debt?' That was in January.

Q. I am asking you if you knew your husband was in debt?

Mr. Fallon: I object to that your Honor.

Mr. Burke: I want to see if you are truthful.

Mr. Fallon: I object to that as very improper.

Mr. Burke: She has been untruthful.

The Court: That is an unfair statement by counsel.

Q. At any time at all, was your husband in debt to your knowledge.

A. I didn't know that, not until I visited Kennedy in January."

Were these the answers of a frank and open witness?

The plaintiff admits she learned of this female cashier in January, 1923, and looked for her (State of Case, Pg. 38, Line 7). She even went to Connecticut to locate her in March, 1923 (State of Case, Pg. 43, Line 9).

So that it may be accepted as true, that Harry Hunke was in debt, and he had been running around with one woman at least, before Oct. 12th, 1922.

Outside of proving some photographs of the Woodcliff flat, this was all that the plaintiff said before the defense opened.

In it there is not a scintilla of evidence suggestive malice or mala fides on the part of the plaintiff.

#### *PART FIVE.*

#### TESTIMONY OF PLAINTIFF'S SISTER FLORENCE.

Florence Fraser was called by the plaintiff.

She visited the plaintiff's home in Woodcliff occasionally (State of Case, Pg. 44, Line 1).

She went with her sister early one Sunday morning, about 7 or 7:30 and let us use her own language:

“I went over one Sunday (morning according to previous questions and answers) about seven or seven-thirty. I went up on the porch and rang the bell. Instead of opening the door and coming down, she raised the window and said, ‘What do you want?’ I said, ‘Is Harry here?’ She said, ‘No.’ I said, ‘Come down I want to talk to you.’ She said, ‘No, I’m in my nightdress.’ I said, ‘We are all women, let us in.’ I said, ‘Is Harry in there?’ She said, ‘No.’ I said, ‘I saw his top-coat on a chair.’ She said, ‘Go home and go to bed,’ we thought (when she was apparently interrupted by counsel).”

Mrs. Hunke as previously set out in this brief, flatly denies this.

Then she relates the scene of Harry and his father leaving the young Hunke’s apartment in Dec. 1, 1922, and her appeal for funds to Edward Hunke in July, 1921, and that Edward Hunke was bitter toward her.

On cross examination, she admitted that she did not see Harry in the apartment and that she “surmised” his belongings were in the suit case (State of Case, Pg. 48, Line 19).

Whatever other information she had in the case was told to her by the plaintiff (State of Case, Pg. 51, Line 20 to the end of page).

We insist that this lady’s story is not reliable, she heard from her sister and all her testimony shows prejudice. She is the plaintiff’s sister and is mighty interested in this suit and all of her testimony should have been taken with the proverbial grain of salt.

Edward Hunke was called as a witness in the plaintiff's case.

The plaintiff's counsel then read from depositions taken before a Supreme Court Commissioner, in which Edward Hunke testified among other things:

"Mr. Fallon: This question was asked of Mr. Edward Hunke: 'You heard your wife tell your son Harry it would be a good thing to put your things in storage and go back and live with your parents?'

Answer: 'Live with his parents? I never heard of such a thing as that. What I did hear her say to him was that he had many debts and that he couldn't pay them, but if they put the furniture in storage and she went to stay with her parents for awhile, they could both work and pay off the debts.'

Q. 'Did you ever suggest that they put their things in storage and come and live with you?'

A. 'I did not; not myself.'

Q. 'Did anybody ever suggest it for you?'

A. 'Not for me.'

Q. 'With your knowledge?'

A. 'No.'

Q. 'Didn't you at the time there was talk of placing the furniture in storage suggest that they each go to work, and she to her parents, and your son come to your place to live?'

A. 'I didn't suggest anything.'

Q. 'Who did suggest it?'

A. 'My wife suggested it.'

Q. 'But that is what was suggested? That she put the things in storage, both go to work and go to live with her parents?'

A. 'No, she suggested that both go to live with her parents, each go to work, and

put the furniture in the back of her house.' ”

That is the testimony of Edward Hunke in these proceedings.

*PART SIX:*

NON-SUIT SHOULD HAVE BEEN  
GRANTED.

The plaintiff rested here.

We have taken from the record, the strongest case which could be made against us up to this point.

Where is there anything indicating an intention on the part of these defendants to separate the young married couple?

The wife may not have known of his debts, but Harry's debts had a very material existence. They were anything but imaginary, even to this point, and so were his running around with another woman anything but imaginary.

The mother knew her son's weakness and in good faith she did not advise a separation, she only suggested a solution to a financial problem.

The same may be said of Edward Hunke. He said nothing, did nothing to suggest any design on his part to separate the young couple.

The plaintiff did not overcome the presumption in favor of these parents. And a non-suit should have been granted.

*PART SEVEN.*

## THE DEFENDANTS' DEFENSE.

The testimony of Mr. Kennedy shows that Harry Hunke was somewhat involved, both financially and with at least one female cashier, as has been indicated. When Mother Hunke said her boy was in debt she knew he was, and she tried to save him in the only way he could be saved, to reduce his expenses, save money and pay his debts. This might not have pleased the wife, but it was practical and wise, and all the forceful efforts of counsel to minimize Kennedy's assertions are of little avail, because the falsity or truth of these statements of Harry's indebtedness and amorous inclinations were immaterial as long as these defendants acted upon them in good faith.

Counsellor Hollander was Receiver of the apartment in which the plaintiff resided, and in later October, 1922, he called to collect the rent and he then testifies as follows:

"I came there, together with Carl Gruley, the man I had in charge of the apartments to collect the rent. I went there the latter part of October, 1922. Of course, I did not know her until then. I was introduced by Carl. She told me her husband had left her and left no money and that she couldn't pay the rent and I asked her where he was working and what he was doing. She told me he was in New York, staying in New York. She gave me a telephone address so that I might call him up. I asked her also what was the trouble between them. She told me he was running around with wo-

men and gambling. I told her I would try to see him the following week when I was in New York."

"Q. Did she make any charge against the father-in-law and mother-in-law?"

"A. I didn't know at the time who the father-in-law and mother-in-law were."

"Q. Nothing was said about the father-in-law or mother-in-law?"

"A. No." (State of Case, Pg. 83, Line 35 et seq.)

The counsel for the plaintiff then sought to prove that Counsellor Hollander was the defendants' attorney; he explained that he acted gratuitously because he was associated with Mr. Edward Hunke in the Twin Theatres, and his services were merely friendly. He received no fee on cross examination the witness testified.

"Q. When you went there the second time what did you talk about?"

A. I told her I had seen her husband in New York. I told her what he had told me, that she nagged him and that he wouldn't come home, that she made life unbearable for him. I told her, 'why don't you make it more bearable for him and maybe he would?'"

(He, the witness, was apparently interrupted by counsel.)

"A. I did.

Q. Did she tell you he was true or not true?"

A. She said she had trouble with him because he was running around with other women, that he was gambling and staying out nights" (State of Case, Pg. 89, Line 26 et seq.).

The defense also produced the janitress of the Woodcliff apartment, before the Hunkes vacated the apartment, she testified as follows:

“Q. What did you hear?

A. I heard them arguing about women and she accused him of not coming home in time, because he was out with other women, and he said, ‘if you would be different to me I would not do such things, I would not.’” (apparently interrupted by counsel). (State of Case, Pg. 103, Line 6.)

Further down the same page she continues:

“Q. Your attention was called to some trouble?

A. To some trouble. Someone had jumped from the window in Mr. Hunke’s apartment.

Q. What did you find out?

A. Mr. Hunke (Harry Hunke) told me he had jumped from the bed-room window.

Mr. Fallon: She says Hunke.

The Court: All right, go ahead.

The Witness (continuing): He jumped from the window to save his life, he said.

The Court: No, no.

The Witness: That was the commotion.

Q. Where did you say you saw him?

A. In the basement.

Q. Where was his wife?

A. Upstairs.

Q. Was there any quarrel at that time?

A. Yes.

Q. Did you hear it?

A. Yes.

Q. What was it about?

A. About staying out late and not coming home.

Q. Was there any talk about women?

A. Yes, sir, she accused women of going out with him."

She repeated in her cross examination that the plaintiff ran her husband out with a butcher knife (State of Case, Pg. 112, Line 8). She also heard frequent quarrels; pretty nearly every night (State of Case, Pg. 111, Line 35 et seq.).

She also testified in reference to the visit of Harry Hunke to obtain his clothes.

"Q. You remember the instance when Harry Hunke called up the apartment when his wife was away? You gave him the keys to enter the apartment and get his things out, didn't you?

A. I don't remember that, I don't remember whether I gave him the keys or who had it.

Q. You remember he had the keys?

A. Yes, I was with him.

Q. He left with a suit case?

A. No, a bundle.

Q. The father was with him?

A. No, sir.

Q. You are sure?

A. Yes, sir.

Q. Who, nobody?

A. Nobody." (State of Case, Pg. 116, bottom of page.)

Then this follows:

"By the Court:

Q. How did you happen to see him on the night that this took place?

A. He came to the basement, Judge, and asked me to go upstairs with him. He did not want to go in the apartment alone. He was afraid of the police. They were watching.

Q. You went up?

A. Yes, sir.

Q. Was anybody else there?

A. No, not a soul.

Q. He took the bundle out?

A. He took the bundle in the basement, I gave him a paper and cord and he wrapped the bundle up." (State of Case, Pg. 118, Line 14.)

Upon being recalled, Mr. Kennedy testified that Harry Hunke told him that he had left his wife, and that he was living with this other woman, and that on account of this admission he was refused promotion. Harry was discharged two weeks later (State of Case, Pg. 130). He repeated it for the Court a few pages later (State of Case, Pg. 135; Line 23).

Both of the defendants took the stand in their own defense. Edward Hunke's testimony is found on page 120 of the case.

"Q. Did you ever advise Harry to leave his wife?

A. No, sir, I did not.

Q. Did you ever entice Harry or endeavor to entice Harry from his wife?

A. I did not.

Q. Did you ever suggest to Harry that he leave his wife?

A. No.

Q. Did you ever help get a suit case out of his apartment?

A. I never was in the apartment from the day that they were together—when he

was sick. I never set foot in that apartment since.

\* \* \* \* \*

Q. Did you ever say or do anything with reference to destroying the husband's affections for his wife?

A. Never.

Q. Did you ever keep Harry in your house over night?

A. No, sir.

Q. Did you ever influence him to break away from his wife?

A. Any conversation that I might have had with him was in reference to his returning to his child.

Q. You always advised him to return to his wife and child?

A. Always."

He repeats this under cross examination (State of Case, Pg. 122).

Mrs. Hunke's denial is found on page 128 of the State of the Case.

It might be well to state here, that the only place the plaintiff personally spoke to Edward Hunke on the case was on a ferry boat. Under examination by her counsel she says on page 119, State of Case, line 20:

"Q. Now, Mrs. Hunke, how many times did you talk with Edward Hunke, Harry's father in reference to this matter?

A. Only once when I met him, I believe on the ferry boat.

Q. Was that the only time you talked to him about the case?

A. Yes, sir."

This was in January, 1923, and she inquired where Harry was.

*PART EIGHT.*

## THE PLAINTIFF'S REBUTTAL.

The plaintiff denied that Mr. Kennedy had mentioned to either her or Detective Cash about the other woman (State of Case, Pg. 147, Line 15). She denied Mr. Hollander called three times, and that she did not know him, and that her mother had seen him (page 147, line 35). She never had any talk with Mrs. Stone (page 148, line 15). She has even said Counsellor Hollander lied (page 149, line 38). She never chased her husband with a carving knife. She never owned one (State of Case, Pg. 151, top). Harry never jumped out of a window (same page).

The plaintiff's mother then testified that Mr. Hollander called only once, and that her daughter did not discuss her case with Mr. Hollander.

The plaintiff recalled Edward Hunke and referred to questions taken in a previous examination before a Supreme Court Commissioner, which had a tendency to impeach himself. The Court permitted the procedure, however.

There follows a long examination on to a trip to Worcester by Mr. Hunke's family (State of Case, Pgs. 158-159).

The plaintiff attempted to demonstrate that the purpose of this visit was to see Harry Hunke. This was in August, 1925.

We think all of this immaterial and not a part of the issue.

And while this trip was dramatically discussed near the close of the case, its value to the issues are most remote, particularly the manner

in proving the facts, through the lips of the defendants themselves.

It did develop, however, that Mrs. Hunke notified the Prosecutor that she had heard her son Harry was in Detroit under an assumed name (State of Case, Pg. 168).

We still hold that all the acts and advice of these defendants was given in good faith. There is absolutely no proof of malice. That the burden of proof on the plaintiff was something more than a mere preponderance of evidence. We submit that the plaintiff had to positively prove malice, and bad faith and that under the decisions, she did not prove it. The testimony is teeming with evidence, that Harry Hunke was greatly in debt and was going around with at least another woman. The truth of these assertions were immaterial. It is sufficient if the defendants were guided by the statements and evidence presented to them and believed them to be true. And the conduct of the plaintiff herself must be taken into consideration. Were it possible for a person to be guilty of contributory negligence in an alienation suit, she sure was guilty of it.

## POINT SIX.

**The motions for non-suit and direction of verdict should have been granted, as to Edward Hunke at least.**

### *PART ONE.*

PLAINTIFF DID NOT SUSTAIN HER BURDEN OF PROOF AGAINST EDWARD HUNKE.

There is not a scintilla of evidence against Edward Hunke at all. The plaintiff spoke to him but once. He is accused of helping Harry remove his belongings, a statement he denies and which Mrs. Stone also denies. If the Worcester trip, by any stretch of the imagination can be deemed a violation, he did not go. They asked him for money and to some measure, he did not accede to their demands. He states absolutely that he always advised Harry to go back to his wife. The parent's presumption of good faith as to him, was certainly never overcome by the plaintiff. There is no proof of him and his wife acting in concert and the conspiracy is not proved. There should have been a direction of verdict for him.

### *PART TWO.*

EDWARD HUNKE'S COMMON LAW LIABILITY.

At common law, the husband was liable for

torts, committed in his presence by his wife, but she was not liable.

*Ermons v. Stevane*, 73 N. J. L. 348.

Under this phase of the case then, Mrs. Catherine Hunke would not be liable, if she acted under his coercion. The plaintiff cannot claim Edward Hunke liable on the theory that he is the husband of Catherine Hunke, and that under a fiction of the law, he acted under his coercion, he is responsible for her acts and hold her, too.

Under the common law, in force in this State, the husband is only liable for such torts of his wife as he would be under the common law in force at the adoption of the Constitution.

*Wolff & Co. v. Lozio*, 68 L. 103.

At common law, this plaintiff could not even maintain this action and it took an act of the Legislation to give her that right.

P. L., 1906, pg. 525 as amended, P. L., 1909, pg. 210.

*Sims v. Sims*, 79 N. Y. L. 577.

We also think this case is authority for the statement, that the above quoted statute gave the wife no extra rights, but only gave her another remedy. In other words, these acts gave the plaintiff the right to sue without joining her husband, but did not increase the defendant's, Edward Hunke's, liability for his wife's torts.

A tort which is not enforceable is no tort at all. Strange as it may seem, our digest only refer to one case in New Jersey as defining tort.

It was given by Chief Justice Gummere, who speaks of it as follows:

“The word ‘Tort’ in legal phraseology has a well defined meaning. It does not include all wrongful acts done by one person to the injury of another, but only those for which individuals may demand legal redress, or stated another way those which give rise to an action for damages.”

*Cooley Torts 2, Addison Torts.*  
*Sims v. Sims, 77 N. J. L. 251.*

While this decision was reversed as above cited, the tort definition was not disturbed.

The plaintiff suing alone at common law, could not recover against either of these defendants, and the husband of a defendant is not liable, simply because he is a husband under the theory of the common law.

We are also of the opinion, that the married woman’s act, has shattered the reasons for the old Common Law Rule, and that, therefore, the husband is no longer liable for torts in which he did not participate, simply due to the relationship of husband and wife. Doubt on the present condition of this question in our State has been expressed in our latest reported decision on the matter sub-judice.

*Majowicz v. Magda, 2 Misc. Repts. 61.*

And it is no longer a question the courts have a right to separate the defendants and grant a verdict in favor of one and against the other.

*Muller v. Knibbs, 195 Mass. 556.*

In fact, the plaintiff admits this, because his amended complaint act has a joint action against the defendant, a single action against Catherine Hunke and a single action against Edward Hunke.

We, therefore, insist that there should have been a direction of verdict in favor of Edward Hunke at least.

### **POINT SEVEN.**

#### **The verdict was against the weight of evidence.**

This point is to a certain extent embraced in the arguments for the motions of non-suit and the direction of a verdict in favor of the defendants.

There is not a single phase of the plaintiff's testimony which is not denied, even the transactions of the eventful October 12th were questioned.

Edward Hunke's story of that evening says that both of the young people were to go to the plaintiff's mother and put the furniture in back of the house (State of Case, Pg. 57, Line 1). She claimed she did not know of Harry's debts until January, 1923, yet the furniture was purchased on credit (State of Case, Pg. 171). She said that her married life was happy. Mrs. Stone says it was anything but happy (State of Case, Pg. 118, et seq.). She claims Counsellor Hollander lied, Mrs. Stone lied, Mr. Kennedy lied. But all of these proved that the plaintiff did have knowl-

edge of her husband's failing and weaknesses before the separation.

Florence Fraser's testimony as to what transpired on Sunday morning after the separation was denied by Mrs. Hunke, and her testimony as to other facts were mere hearsay, a repetition of what her sister, the plaintiff told her, Mary Fraser, the mother of the plaintiff contradicted herself in reference to the visit of Mr. Hollander. The evidence is overwhelming in favor of the defendants.

All of the plaintiff's witnesses, except the defendants, are interested parties, while the defendants produced such disinterested witnesses as Messrs. Gellen and Kennedy, Mrs. Stone and in addition, Mr. Hollander, who's testimony will be attacked, because he did Edward Hunke a friendly act, and therefore, he represented him and was an interested party. But Mr. Fallon, Jr., took the stand also, and he represented the plaintiff. *ABOVE ALL, THE PRESUMPTION IN FAVOR OF THE DEFENDANTS OF HAVING ACTED IN GOOD FAITH IN THIS MATTER MUST HAVE BEEN COMPLETELY IGNORED. THERE WAS NO MALICE PROVED. NOT A SINGLE ACT OF BAD FAITH PROVED.*

The Court is reminded that this suit was commenced May 28, 1924, while the Worcester trip was taken August, 1925, and even if these defendants paid a clandestine trip to see their son, which they deny, it had no material effect on this case. There was evidence that Mr. Catherine Hunke told the Prosecutor of the Pleas what information she had in the whereabouts of her son, a manifest act of good faith, by a mother whom even the plaintiff suggest was so devoted to her son. Her

attempted sacrifice, which might have meant incarceration of her son, negated all arguments of bad faith on her part.

The verdict from all angles was against the great weight of evidence and should be set aside.

### **POINT EIGHT.**

**The damages awarded are excessive.**

1. While running around with another woman might not be a bar to this action, it certainly should have been consideration in mitigation of the damages. Harry Hunke paid attention to another woman and lost his affection for his wife before the separation. This should have mitigated the damages.

2. Harry Hunke's home life was not ever pleasant. According to Mrs. Stone, his wife was continually quarreling and nagging about women and late hours. This should have mitigated the damages.

3. Harry Hunke was embarrassed with debts and he left his wife to escape these obligations. This should have mitigated the damages.

4. There is no evidence of any accusations, slander or recriminations made by the defendants against the plaintiff and none are alleged. Damage should have been low on this account.

5. There was no criminal conversation or seduction in the case. Damages should have been low for that reason.

6. While the plaintiff may have acted within her rights in causing the early arrest of her husband, her conduct must be considered in the measure of damages. How much of the trouble did she bring upon herself?

7. The natural love of parents for their children should have been appreciated, and they should not have been unnecessarily penalized.

8. The absence of any evidence of bad faith or unworthy motives should have reduced the verdict.

9. Considering the evidence in all respects, the husband, a bookkeeper, earning \$50. per week, and once in a while earning a little extra, the verdict is excessive.

Other love alliances of the husband, while not a bar to an alienation suit, should be considered as mitigating damages.

This is the theory expounded in the leading case.

*Williamson Osenton* (U. S. C. C. A.),  
220 Fed. 653.

In *Allen v. Forsythe*, 160 Mo. App. 262 (142 S.W. 820), a judgment of \$6000 against relatives of plaintiff's wife was reduced to \$4,000 because it was excessive.

In *Porter v. Hushman*, 154 N. W. 503, a \$10,000 verdict was set aside as excessive.

In *Warren v. Graham*, 174 Iowa 162 (156 N.W. 323), a verdict of \$4,875 was set aside as excessive.

In *Heisher v. Heisher*, 127 N.W. 823, a case somewhat similar to this, a verdict of \$7,000 was set aside.

In *Sivley v. Sivley*, 96 Mass. 137, a verdict of \$6,000 was set aside.

Perhaps at this point it might be well to refer to the New Jersey cases in alienation suits.

In *Mulock v. Ulizio*, 129 Atl. 204, the verdict was for \$25,000, but the judgment was against a paramour without any extenuating circumstances.

In *Davenport v. Holder*, 112 Atl. 418, the amount of the judgment is not given but the judgment was also against a paramour.

In *Day v. Day*, 110 Atl. 703, this was a reversal on a rule to show cause, the judgment being for the defendant in the Court below.

In most cases of alienation, the greater offences of adultery and seduction are present and such cases are distinguished from that sub-judice.

Another question arises here. There is a line of decisions.

Where punitive damages are permissible, the verdict must be commensurate with property assets of the defendants. The only evidence here is that the defendant Edward Hunke is only a cashier in a small bank in which he holds no stock and there is no evidence of Catherine Hunke's financial standing at all.

So in one of the recent leading cases in the courts, *Woodhouse v. Woodhouse*, 130 Atl. 757, we find the following syllabus, pg. 763:

“In an action against husband's parents for alienation of affection, evidence of

wealth of husband's father, largely in excess of wealth of his mother, leaving on the question of exemplary damages held properly, received when limited in its application to a possible verdict against the father alone."

#### **POINT NINE.**

**The trial court erred in admitting Exhibit P. 2. (State of Case, pg. 27, bottom of page.)**

This envelope was a bank envelope. The return address was scratched out and "Harry Hunke, Weehawken, N. J.," written over it, and bore the Post Mark "West New York" and was directed to the plaintiff.

This was not material or relevant. The business envelope could be picked up in the bank or in the home of Edward Hunke. It was in no way connected with the defendants and there was no evidence that the defendants knew anything about it. It did damage with the jury.

#### **POINT TEN.**

**The court erred in not ordering a mistrial upon the opening of the case by Mr. Fallon.**

Considering the intensity with which this trial was conducted, the jury could not fail to have

been impressed with the eloquent demand of the opposing counsel, who with all his forensic ability and dramatic skill demanded the relegation in the inoffensive Edward Hunke, to the rear of the court room. Some might call it a brilliant coup, but as the jury looked upon the smiling young and no unattractive wife and contrasted her with this cashier of a bank and his fifty-seven year old wife, who can tell but that the jury then and there, did become prejudiced against the old man who counsel complained was sneering at him.

There should have been a mistrial ordered then and there.

We respectfully submit that for these various causes, there should be a new trial.

Respectfully submitted,

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## Court of Errors and Appeals

LILLIAN HUNKE, <i>Plaintiff-Respondent,</i>  vs.  EDWARD HUNKE AND CATHERINE HUNKE, <i>Defendants-Appellants.</i>	}	On Appeal from Supreme Court.
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### APPELLANTS' REPLY BRIEF

Without waiving any of the points raised in our main brief, we will confine ourselves to the denial by the Court below of defendants' motions for a non-suit (c. p. 57), and for a direction of a verdict (c. p. 187), to both of which defendants duly excepted (c. p. 61 and p. 195).

We concede it to be elementary that it is the province of the jury to settle the facts and to draw the legitimate inferences therefrom, but we submit that where no facts are established by evidence from which the jury might reasonably infer that defendants caused the separation and in doing so were actuated by malice or bad motives there is no case to go to the jury (*Kerner vs. Zebb*, 5 N. J. Adv. Rep. 169-171).

We believe that that is the situation here. *On the argument counsel challenged appellee to point out any evidence to prove or justify the inference that defendants either caused the separation or acted from malice or bad motives.* Appellee, in

answer to this challenge and the suggestion of the court, has combed the record and sets out in detail (pp. 19 to 23 of her brief) every act or thing done or said by defendants. These are the things upon which she relies and upon which she must stand or fall.

We submit that the things appellee has pointed out, taken together or separately, cannot sustain the verdict of the jury.

We repeat again that plaintiff must prove that defendants caused the separation or such facts as would justify the jury in drawing the inference that they did. This is elementary and needs no citation.

We submit that these things done and said by Catherine Hunke do not amount to proof that she caused the separation nor do they justify the jury in drawing the inference that she did.

We repeat again what we say in our main brief, viz.: that a parent is only liable where he has acted maliciously and from bad and improper motives:

*White vs. Peck*, 5 Johns 196.

*Bennett vs. Smith*, 21 Bart 439.

*Boland vs. Stanely*, 88 Ark. 562 (115 S. W. 163).

*Kleist vs. Brunting*, 232 Fed. Rep. 555 (146 C. C. A. 513).

*White vs. Ross*, 47 Mich. 172 (10 N. W. 188).

*Westlake vs. Westlake*, 34 Ohio State 621.

*Brown vs. Brown*, 124 N. C. 19 (32 S. E. 320).

*Young vs. Young*, 8 Wash. 81.

*Tasker vs. Stanley*, 153 Mass. 148 (26 N. E. 41).

*Hossfeld vs. Hossfeld*, 188 Fed. Rep. 61 (110 C. C. A. 131).

*Heisher vs. Heisher*, 151 Iowa 503 (131 N. W. 676).

*Workman vs. Workman*, 43 Ind. App. 382, 85 N. E. 997.

*Miller vs. Miller*, 122 Mo. App. 693, 99 S. W. 757.

*Melcher vs. Melcher*, 102 Neb. 790 (169 N. W. 720).

*Ickes vs. Ickes*, 237 Pa. 582 (85 Atl. 885).

or as was said in *Beisel vs. Gerlach*, 221 Pa. 232 (70 Atl. 721-722):

“In other words, there can be no recovery against the father, *unless it clearly appears that he acted maliciously without justification, and from unworthy motives.* This is substantially the rule recognized in all jurisdictions.”

And the presumption is that the parents have acted without malice and with good motives.

*Multer vs. Knibbs*, 193 Mass. 556 (79 N. E. 762).

*Reed vs. Reed*, 6 Ind. App. 317 (33 N. E. 638).

We cannot urge too strongly upon the court the fact that there is a total absence of proof of malice or bad motives on the part of Catherine Hunke and absolutely no evidence justifying an inference of such malice or bad motive, nothing to overcome the presumption of good motives.

This is the case as to Catherine, the mother. As to the father, still less can be said for the case made out by appellee.

*There is not the slightest shred of evidence of anything said or done by HIM before the separation nor is there the faintest suggestion in the case that he restrained his son from returning to his wife.*

Nothing appellee has pointed out in the case can in any way suggest malice or bad motive on the father's part toward plaintiff.

Surely, the fact (if it be a fact) that the father permitted his son to use his stationery to send money to the wife (Exhibit P 1-2) is not evidence of malice against the wife.

We insist that appellee has failed to point out a single fact showing malice or bad motives on the part of these parents.

Respectfully submitted,

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WILLIAM C. ASPER,  
*Of Counsel.*

